

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

July 7, 2011 Meeting

Agenda Item 3

**SUBJECT:** Whitacre Residence Appeal - (PA2010-105)  
101 15th Street  
▪ Use Permit No. UP2010-021  
▪ Modification Permit No. MD2010-027

**APPLICANT:** William Azzalino, AIA

**PLANNER:** Fern Nueno, Assistant Planner  
(949) 644-3227, [fnueno@newportbeachca.gov](mailto:fnueno@newportbeachca.gov)

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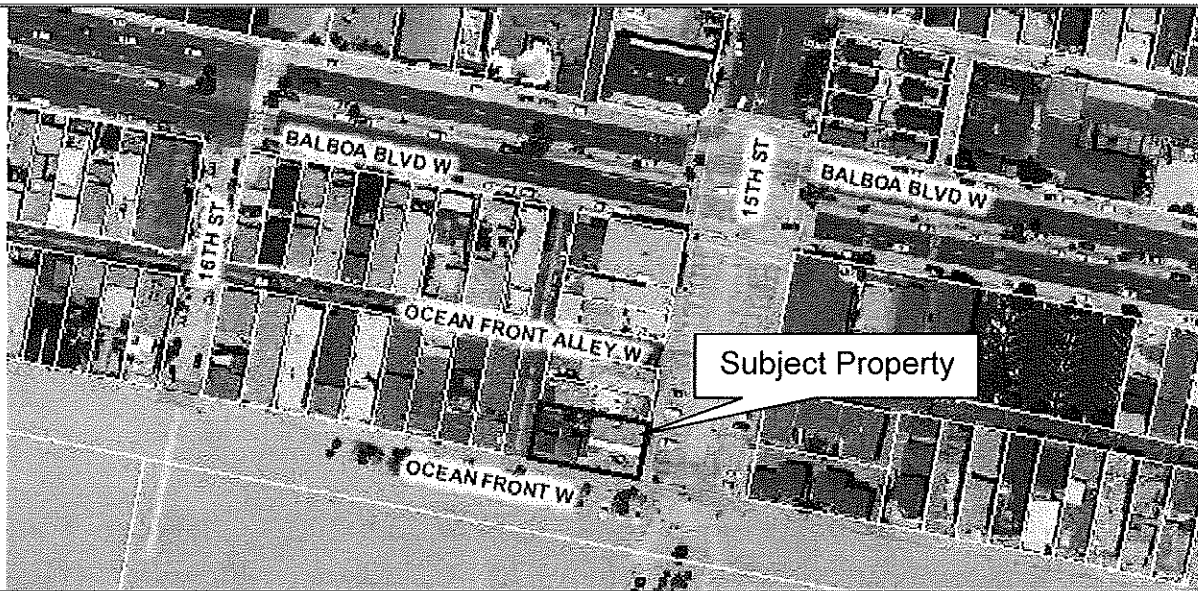
**PROJECT SUMMARY**

An appeal of the Zoning Administrator's approval of Use Permit No. UP2010-021 and Modification Permit No. MD2010-027, which allowed an addition to a nonconforming structure. The Use Permit would allow for an addition of up to 75 percent of the existing gross floor area and alterations of up to 75 percent of the existing structural elements of the nonconforming structures. The Use Permit would not allow a demolition and rebuild of the existing structures, only alteration of up to 75 percent of the structural elements. The Modification Permit would allow for encroachments into the rear and side setbacks. The site is developed with two (2) commercial structures adjacent to 15<sup>th</sup> Street and a residential structure to the rear. The applicant proposes an addition to the existing residence and the addition of a new dwelling unit above the commercial structures. Four-car parking is proposed to satisfy the residential parking requirements.

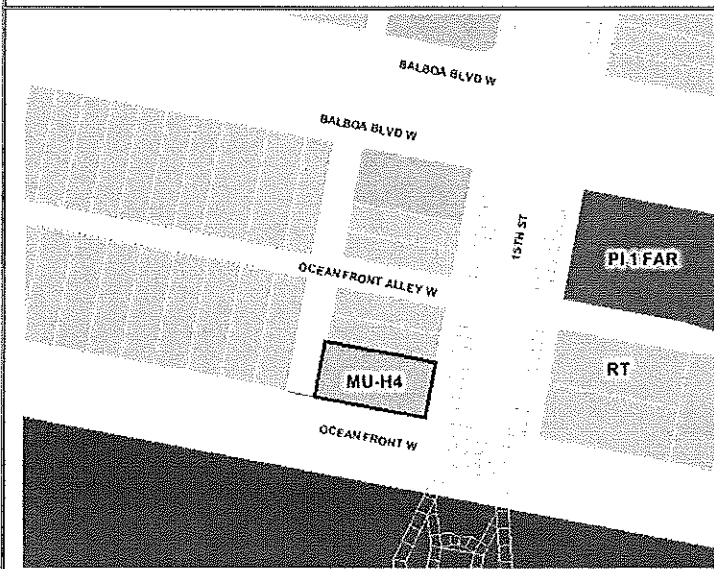
**RECOMMENDATION**

1. Conduct a public hearing; and
2. Uphold or reverse the decision of the Zoning Administrator and adopt Resolution No. \_\_ (Attachment No. PC 1 or PC 2) for Use Permit No. UP2010-021 and Modification Permit No. MD2010-027.

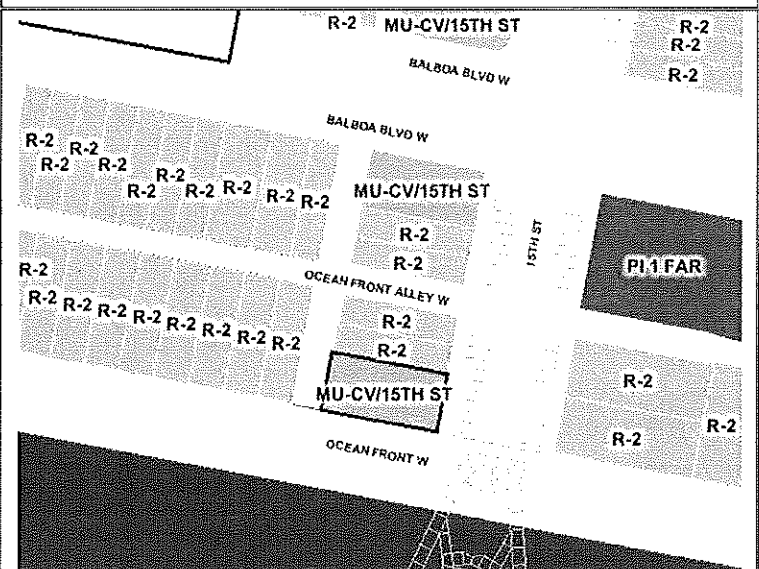
### VICINITY MAP



### GENERAL PLAN



### ZONING



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Mixed Use Horizontal (MU-H4)	Mixed Use (MU-CV/15 <sup>th</sup> St)	Mixed use with fast food, retail surf shop, and residential
NORTH	Two-Unit Residential (RT)	Two-Unit Residential (R-2)	Mixed use with acupuncture and residential
SOUTH	Parks and Recreation (PR)	Parks and Recreation (PR)	Beach and public restrooms
EAST	Two-Unit Residential (RT)	Two-Unit Residential (R-2)	Multi-unit and two-unit residential
WEST	Two-Unit Residential (RT)	Two-Unit Residential (R-2)	Two-unit residential

## **INTRODUCTION**

### **Project Setting**

The subject property is located on the Balboa Peninsula on the corner of 15<sup>th</sup> Street and West Ocean Front and is approximately 5,000 square feet in area (50 feet wide by 100 feet deep). The subject property is surrounded on three (3) sides by public rights-of-way and is adjacent to a mixed-use structure located to the north. The nearby surrounding area is developed with residential, commercial, places of worship, schools, beaches, and parks.

### **Project Description**

The applicant requests a use permit for an addition of up to 75 percent of the existing gross floor area and alterations of up to 75 percent of the existing structural elements of a nonconforming structure. The applicant also requests a modification permit to allow the proposed addition to encroach five (5) feet into the required 5-foot side setback on the northerly side of the property in order for the proposed residential unit on the second floor to line up with the wall of the commercial structure on the first floor. The modification permit request is also to allow an 8-foot encroachment into the required 10-foot rear setback for the carports with a deck above. The site is developed with two (2) commercial structures adjacent to 15<sup>th</sup> Street and a residential structure to the rear. The applicant proposes an addition to the existing residence and the addition of a new dwelling unit above the commercial structures. Four-car parking is proposed to satisfy the residential parking requirements.

The existing mixed-use development is nonconforming due to encroachments into the required 10-foot rear alley setback and 5-foot side setback along the northerly property line. The property is also nonconforming because the commercial uses do not provide off-street parking. Two (2) previous modification permits were approved for additions to the nonconforming structure allowing encroachments into the rear alley setback. Of those, only one (1) was constructed, which allowed encroachments into the required 10-foot rear setback of 5 feet, 8 inches with an additional 6 inches for the roof eave. The construction also included interior alterations that converted a duplex into a single-unit residence.

Pursuant to Chapter 20.62 (Nonconforming Structures and Uses) of the 1997 Zoning Code, an increase of up to 75 percent of the gross floor area and alteration of up to 75 percent of the structural elements are permitted with the approval of a use permit. The proposed project is an addition to the existing residential structure and the addition of a new residential unit. No intensification of the commercial uses is proposed. Since the appeal, the applicant has submitted structural calculations demonstrating that the structural alterations may be as low as 25 percent (Attachment No. PC 3). However, because of the age of some of the structures on-site, dry rot, termite damage, or other issues may lead to a higher percentage of structural alterations. Under no

circumstances could this approval allow more than 75 percent structural alterations or a demolition and reconstruction of the existing structures in their entirety.

### Background

On May 25, 2011, the Zoning Administrator conducted a public hearing, reviewed the applicant's request, and received testimony from the applicant and members of the public. The Zoning Administrator approved the application. A copy of the Action Letter is attached (Attachment No. PC 4). Staff recommended approval of the project to the Zoning Administrator based on the circumstances of the project and the facts in support of the required findings.

Prior to the Zoning Administrator hearing, three (3) comment letters (Attachment No. PC 5) were received via email that expressed concerns about the project, including trash and parking. Staff also described the project to members of the public in person and over the telephone. During the hearing, members of the public expressed concerns regarding allowing up to 75 percent structural alterations and the lack of parking for the commercial portion of the development.

The Zoning Administrator determined that there were facts in support of the required findings and approved the project. As part of the approval, a condition was included requiring the trash to be located on site and screened from view.

On June 8, 2011, Planning Commissioner Hawkins appealed the Zoning Administrator's action.

### DISCUSSION

Ordinance 2010-21, which adopted the current Zoning Code, provides that discretionary applications deemed complete prior to the effective date of the ordinance may be processed under the previous Zoning Code, provided they are found consistent with the General Plan. The application was submitted and deemed complete prior to the adoption of the current Zoning Code. Therefore, this project is being reviewed subject to regulations of the previous Zoning Code (1997 Zoning Code).

### Analysis

#### *Required Findings*

Section 20.91.035, Section 20.62.040, and Section 20.93.030 of the 1997 Zoning Code require certain findings to be made in order to approve the project. In order to grant approval of the Use Permit and Modification Permit, the Planning Commission must make each of the following findings:

*Use Permit*

1. The proposed location of the use is in accord with the objectives of the Zoning Code and the purposes of the district in which the site is located.
2. The proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.
3. The proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.
4. The cost of improvements to be made is minor in comparison to the value of the existing nonconforming condition.
5. The cost of correcting the nonconforming condition would exceed the cost of the other alterations proposed.
6. Retention of the nonconforming condition is necessary to maintain reasonable use of the structure.
7. The addition and alteration does not increase the structure's inconsistency with the regulations of the Zoning Code.

*Modification Permit*

8. The granting of the application is necessary due to the practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.
9. The requested modification will be compatible with existing development in the neighborhood.
10. The granting of such an application will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and will not be detrimental to the general welfare or injurious to property or improvements in the neighborhood.

The Zoning Administrator believed that the proposed project meets the legislative intent of the 1997 Zoning Code and that findings for approval could be made, and facts in support of the required findings are included in the draft resolution upholding the Zoning Administrator's decision (Attachment No. PC 1).

### *Appeal Letter*

The letter of appeal (Attachment No. PC 6) listed seven (7) points regarding why the decision was appealed. The appeal letter primarily addressed facts in support of the required findings for the Use Permit regarding the alteration of up to 75 percent of the structural elements. The numbered points below correspond to the seven (7) points made in Commissioner Hawkins' letter.

1. Use permits are reviewed on a case-by-case basis. Several use permits for a variety of developments and uses have been approved in the vicinity of the proposed project, including use permits for a mixed-use structure with tandem parking, a church, and alterations and additions to nonconforming structures.
2. Section 20.62.030.A states that the "Planning Director shall determine the nonconformity of any use, building, structure, or lot." The project description included in the Zoning Administrator Action Letter and public notice indicate that the proposed project is a request to allow an addition to a nonconforming structure. The existing structures are nonconforming due to deficient commercial parking and setback encroachments into the rear and northerly side setback areas.
3. The Zoning Administrator determined that the facts presented in the action letter supported making the health, safety, and welfare finding. The required four-car parking for the residential uses is proposed with the project and an enlargement or intensification of the commercial uses is not proposed. Therefore, a request for a parking waiver is not required or requested.
4. The cost of the proposed project is minor in comparison to the value of the nonconforming condition. The existing development could not be built under current development standards. The nonconforming, rear setback encroachment maintains the existing livable space within the structure. The five-foot encroachment of the retail surf shop into the side setback allows reasonable use of the commercial tenant space. The estimated cost of the proposed project is \$550,000, which is minor in comparison to the value of the nonconforming parking and setbacks.
5. The cost of correcting the nonconforming condition would exceed the cost of the proposed project. Correcting the nonconforming setbacks would require the removal of existing floor area from the residential structure and retail surf shop, and would likely require demolition and reconstruction of the entire structures.

The proposed alterations within the setback areas are only a minor portion of the entire project. Based on information from the applicant, which was reviewed by staff, the estimated cost of demolishing the structures within the setbacks and rebuilding them would be approximately \$860,000 and the estimated cost of the proposed project is \$550,000.

6. Approval of the Use Permit for 75 percent structural alterations would not allow a demolition and reconstruction of the existing structure as only alterations are permitted.
7. The 1997 Zoning Code remains available at City Hall and is available online at <http://www.newportbeachca.gov/index.aspx?page=175>.

The link to the 1997 Zoning Code on the website was removed because only a few projects remained under the 1997 Zoning Code. Additionally, even though the website noted that the 1997 Zoning Code had been superseded and was only being used for the projects that met the submittal deadline, having the link posted on the website created confusion for the public. The City wanted to avoid any potential misuse of the 1997 Zoning Code during project design; therefore, staff made the determination that it was best to remove the link from the website.

The project title is "Whitacre Residence" even though this is a mixed-use property because the addition is to the existing residence and the addition of a second dwelling unit. This title was not intended to be misleading and the project description describes the mixed-use development on-site.

#### Alternatives

1. Should the Planning Commission find there are facts to support the findings required to grant approval of the Use Permit and Modification Permit, as proposed or as modified, the Planning Commission should adopt Resolution No. \_\_\_\_ (Attachment No. PC 1), upholding the decision of the Zoning Administrator, and approving Use Permit No. UP2011-021 and Modification Permit No. MD2010-027.
2. Should the Planning Commission find the facts do not support the findings required to grant approval of the Use Permit and Modification Permit, the Planning Commission should adopt Resolution No. \_\_\_\_ (Attachment No. PC 2), reversing the decision of the Zoning Administrator, and denying Use Permit No. UP2011-021 and Modification Permit No. MD2010-027.

#### Environmental Review

If upheld and approved, then this project is exempt from CEQA, pursuant to Section 15301 (Class 1 – Existing Facilities) of the CEQA Guidelines, California Code of

Regulations, Title 14, Chapter 3, which exempts minor alterations to existing facilities that involve negligible expansion of the use, including the addition of a new residential unit.

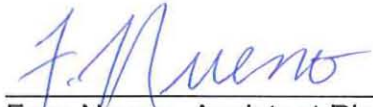
If reversed and denied, then the project is not subject to the California Environmental Quality Act ("CEQA") review, pursuant to Section 15270 of the CEQA Guidelines.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to all property owners within 300 feet of the property (excluding intervening rights-of-way), and posted at the project site a minimum of 10 days in advance of this meeting consistent with the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

Submitted by:



Fern Nueno, Assistant Planner



Gregg Ramirez, Senior Planner

ATTACHMENTS

- PC 1 Draft Resolution – Uphold
- PC 2 Draft Resolution – Reverse
- PC 3 Calculations of Structural Alterations
- PC 4 Zoning Administrator Action Letter
- PC 5 Correspondence
- PC 6 Appeal Letter
- PC 7 Project Plans



# **Attachment No. PC 1**

Draft Resolution - Uphold

RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH UPHOLDING THE DECISION OF THE ZONING ADMINISTRATOR AND APPROVING USE PERMIT NO. UP2010-021 AND MODIFICATION PERMIT NO. MD2010-027 FOR AN ADDITION AND ALTERATIONS TO A NONCONFORMING STRUCTURE THAT WILL ENCROACH INTO THE SIDE AND REAR SETBACKS LOCATED AT 101 15<sup>TH</sup> STREET (PA2010-105)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by William Azzalino, with respect to property located at 101 15<sup>th</sup> Street, and legally described as Lots 1 and 2, Block 15, Section B, requesting approval of a use permit and modification permit.
2. The applicant proposes an addition to a nonconforming, mixed-use structure. The Use Permit would allow an addition of up to 75 percent of the existing square footage and up to 75 percent structural alterations to the existing structures. The Modification Permit would allow the proposed addition to encroach five (5) feet into the required five-foot side setback on the northerly side of the property and eight (8) feet into the required ten-foot rear alley setback.
3. The subject property is located within the Mixed-Use Cannery Village/15<sup>th</sup> St (MU-CV/15<sup>th</sup> St) Zoning District; however, the Retail and Service Commercial – Residential Overlay (RSC-R) District regulations from the 1997 Zoning Code apply to this project. The General Plan Land Use Element category is Mixed-Use Horizontal (MU-H4).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Horizontal (MU-H).
5. A public hearing was held on July 7, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place, and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act, pursuant to Section 15301 (Class 1 – Existing Facilities).

2. Class 1 exempts minor alterations to existing facilities that involve negligible expansion of the use, including the addition of a new residential unit. The proposed project includes an addition to the existing residential unit, the construction of an additional unit, and the construction of a two-car garage and a two-car carport.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.91.035, Section 20.62.040, and Section 20.93.030 of the 1997 Zoning Code, the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *The proposed location of the use is in accord with the objectives of the Zoning Code and the purposes of the district in which the site is located.*

#### Facts in Support of Finding:

- A-1. The site is located in the RSC-R (Retail and Service Commercial – Residential Overlay) District of the 1997 Zoning Code. The intent of this district to provide areas which are predominantly retail in character but which allow some service office uses. The intent and purpose of the Residential Overlay district is to provide for the establishment of residential uses in commercial districts. The proposed mixed use project is a permitted use in this district. The existing eating and drinking establishment and retail surf shop meet the intent of the RSC district, and the existing and proposed residential units meet the intent of the R-Overlay District.

#### Finding:

- B. *The proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.*

#### Facts in Support of Finding:

- B-1. The existing commercial structures and residential units on site are consistent with the Mixed Use-Horizontal (MU-H4) land use designation of the General Plan, which applies to properties where it is the intent to establish the character of a distinct and cohesively developed district or neighborhood containing multi-family residential with clusters of mixed-use and/or commercial buildings. Mixed-use or commercial buildings are required on parcels at street intersections.
- B-2. The neighborhood is developed with commercial, residential, and mixed use properties. The subject property has been developed with mixed use for at least fifty

years, and the addition of one (1) residential dwelling unit will not create any significant negative impacts.

- B-3. The property abuts public rights-of-way of three sides; therefore, the addition is directly adjacent to only one (1) other property.
- B-4. The proposed addition will provide the required parking for the residential units. The existing commercial structures are not being enlarged or intensified, so the commercial parking demand is not being increased.
- B-5. The proposed addition will conform to all other requirements of the 1997 Zoning Code, including height and square footage limitations.

Finding:

- C. The proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.*

Facts in Support of Finding:

- C-1. The proposed mixed-use project is consistent with the legislative intent of Chapter 20.15 (Commercial Districts) and Chapter 20.52 (Residential (R) Overlay District) of the 1997 Zoning Code. The proposed project meets the development standards of the RSC-R district in regards to minimum site area per unit, height limit, and minimum lot area.
- C-2. The existing structures are nonconforming due a 6-foot-2-inch encroachment into the 10-foot rear alley setback, a 5-foot encroachment into the 5-foot northerly side setback, and due to insufficient off-street parking for the commercial uses. The proposed remodel of the existing residential unit and the addition of a unit are in conformance with the standards of Chapter 20.62 (Nonconforming Structures and Uses) of the 1997 Zoning Code. Section 20.62.040 (Nonconforming Structures) allows for structural alterations and additions of up to 75 percent with the approval of a use permit.
- C-3. The existing residential unit conforms with the parking requirements of the R-Overlay District of two (2) parking spaces per unit. The proposed construction includes the addition of two (2) parking spaces for a total of four (4) parking spaces, meeting the residential parking requirements. No addition is proposed to the commercial structures.

Finding:

- D. The cost of improvements to be made is minor in comparison to the value of the existing nonconforming condition.*

Facts in Support of Finding:

- D-1. The existing mixed-use structure could not be rebuilt if it were to be demolished. In order to bring the existing buildings into conformance with the required setbacks, the removal of a significant portion of the residential living area and the retail surf shop would be necessary. The nonconforming, rear setback encroachment maintains the existing livable space within the structure. The five-foot encroachment of the retail surf shop into the side setback allows reasonable use of the commercial tenant space. The estimated cost of the proposed project is \$550,000, which is minor in comparison to the value of the nonconforming parking and setbacks.
- D-2. Per the County Assessor's records, the total value of the property was assessed at \$1,508,322 for the 2010 calendar year.

Finding:

- E. The cost of correcting the nonconforming condition would exceed the cost of the other alterations proposed.*

Facts in Support of Finding:

- E-1. Correcting the nonconforming setbacks would require the removal of existing floor area from the residential structure and retail surf shop. The proposed alterations within the setback areas are only a minor portion of the entire project; therefore, the cost of the overall project is greater than the cost of the alterations within the setback areas.
- E-2. Demolition and replacement of the structures could not be accomplished without approval of a parking waiver.
- E-3. Based on information from the applicant, which was reviewed by staff, the estimated cost of demolishing the structures within the setbacks and rebuilding them would be approximately \$860,000 and the estimated cost of the proposed project is \$550,000.
- E-4. The City has no plans on file for the original construction. Based on information from the County of Orange, the existing structures were built in the 1920s.

Finding:

- F. Retention of the nonconforming condition is necessary to maintain reasonable use of the structure.*

Facts in Support of Finding:

- F-1. Retention of the nonconforming parking for the commercial structures is necessary because a mixed-use structure similar to the existing development could not be built under current development standards. The number of parking spaces required for the

amount of commercial floor area allowed on this site is a minimum of ten (10) spaces based on a parking ratio of one (1) parking space for every 250 square feet of gross floor area. The minimum allowed floor area for a commercial structure on this mixed-use property is 1,250 square feet, which would require a minimum of five (5) parking spaces. This site does not provide adequate space for a code-compliant parking lot with 5-10 parking spaces, in addition to the required residential parking.

- F-2. Retention of the nonconforming rear setback encroachment maintains the existing livable space within the structure. Removing the encroachments would result in one (1) less bedroom and reduced living area in the living room and master bedroom.

Finding:

- G. The addition and alteration does not increase the structure's inconsistency with the regulations of the Zoning Code.*

Facts in Support of Finding:

- G-1. The proposed project includes the addition of two (2) parking spaces, satisfying the requirements for residential parking. The commercial structures are not being enlarged or intensified.
- G-2. The proposed addition and alterations will meet all other development standards for the RSC-R District, with the exception of the Modification Permit requests.
- G-3. The proposed construction is contained generally within the footprint of the existing structure.

Finding:

- H. The granting of the application is necessary due to the practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.*

Facts in Support of Finding:

- H-1. The northerly side yard setback requirement of five (5) feet is due to the abutting property's Zoning designation of R-2 (Two-Unit Residential). The Zoning Code requires a side yard setback only because the abutting property is designated for residential use; however, the property to the north is developed with a mixed-use structure. This property is subject to abatement of the nonconforming mixed-use, but the property owner has applied for General Plan, Zoning Code, and Coastal Land Use Plan amendments to change the property to allow for mixed-use. If the amendment application is denied, then the property owner may request an extension on the abatement. Therefore, there is a possibility that the property will remain mixed-use for the foreseeable future.

- H-2. The additional dwelling unit is being proposed within the required setback in order for the wall to line up with the existing commercial structure on the first floor.
- H-3. The existing commercial structures and residential dwelling unit constitute a practical difficulty associated with the property as the only location available for the four-car parking is located within the side and rear yard setbacks.

Finding:

- I. The requested modification will be compatible with existing development in the neighborhood.*

Facts in Support of Finding:

- I-1. The deviation from the Zoning Code requested through this application is compatible with the characteristics of the surrounding properties, many of which do not provide side yard or rear yard alley setbacks, either because of differing Zoning Code requirements or nonconforming encroachments.
- I-2. Other properties on the block contain similar mixed-use projects with commercial structures on the first floor and residential uses above.

Finding:

- J. The granting of such an application will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and will not be detrimental to the general welfare or injurious to property or improvements in the neighborhood.*

Facts in Support of Finding:

- J-1. The alley is approximately 25 feet wide and provides sufficient access for vehicles to park in the garages and carports. The 25-foot width is also adequate for circulation.
- J-2. The existing structures on site are built up to the northerly property line. The existing mixed-use structure to the north is also built on the property line, and this layout has not proven to be detrimental.
- J-3. The proposed encroachment into the alley setback is for the carports and a deck above. No new living area is proposed within the alley setback.

**SECTION 4. DECISION.**

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby approves Use Permit No. UP2010-021 and Modification Permit No. MD2010-027 (PA2010-105), upholding the

Tmplt: 03/08/11



**EXHIBIT "A"****CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved plot plan, floor plans, and elevations, except as noted in the following conditions.
2. The guard rail for the deck adjacent to the alley shall be constructed with wrought iron, glass, or similar open or translucent material.
3. The addition is limited to 75 percent of the existing gross floor area.
4. The alterations are limited to 75 percent of the structural members.
5. All signs shall conform to the provisions of Chapter 20.67 of the Municipal Code or any applicable comprehensive sign program that is in force for the subject property.
6. No temporary "sandwich" signs, balloons or similar temporary signs shall be permitted, either on-site or off-site, to advertise the proposed food establishment, unless specifically permitted in accordance with the Sign Ordinance of the Municipal Code. Temporary signs shall be prohibited in the public right-of-way, unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.
7. All trash shall be stored within the building or within public dumpsters provided for the convenience of businesses in the area, or otherwise screened from view of neighboring properties except when placed for pick-up by refuse collection agencies. The trash dumpsters shall have a top which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.
8. The applicant shall maintain the trash dumpsters or receptacles so as to control odors which may include the provision of fully self-contained dumpsters or may include periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Trash generated by the establishment shall be adequately contained in sealed plastic bags to control odors prior to placement in the trash dumpster.
9. Anything not specifically approved by this Use Permit and Modification Permit is prohibited and must be addressed in a separate and subsequent review.
10. This approval was based on the particulars of the individual case and does not, in and of itself or in combination with other approvals in the vicinity or Citywide, constitute a precedent for future approvals or decisions.

11. A building permit shall be obtained prior to commencement of the construction. The construction must meet all applicable Building Code requirements including parapets and guards and fire resistant construction, where required.
12. A copy of this approval letter shall be incorporated into the City and field sets of plans prior to issuance of the building permits.
13. Approval from the California Coastal Commission is required prior to issuance of a building permit.
14. Prior to issuance of building permits, the applicant shall provide a covenant for review and approval by the Office of the City Attorney as to form and content, that will address holding the site to no more than two (2) dwelling units. Once approved and properly executed, that document shall be forwarded to the City officials for recordation against the property with the County Recorder.
15. If any of the existing public improvements surrounding the site are damaged by private work, new concrete sidewalk, curb and gutter, street pavement, and other public improvements will be required by the City at the time of private construction completion. Said determination and the extent of the repair work shall be made at the discretion of the Public Works inspector.
16. All work performed within the public right-of-way shall be reviewed and approved by the Public Works Department under an encroachment permit/agreement, if required.
17. Any nonstandard encroachment within the public right-of-way shall be removed, including any stairs or railings.
18. Each unit shall be served by separate water and sewer, and traffic grade lids shall be provided for each.
19. The applicant is responsible for all upgrades to the City's utilities as required to fulfill the project's demands, if applicable.
20. New and existing fire services shall be protected by a USC approved double check detector assembly and installed per STD-517-L, if required by the Fire Department.
21. New water services shall be installed per STD-502-L or STD-503-L, depending on the size.
22. New and existing commercial water meter(s) shall be protected by a USC approved reduced pressure backflow assembly and installed per STD-520-L-A.
23. New and existing sewer laterals shall have a cleanout installed per STD-406-L.

24. The project will need to meet fire flow requirements with the addition to the building. The City and field sets of plans shall show all existing and proposed fire hydrants located within 300 feet of the project.
25. Smoke alarms will be required in the R occupancies and shall be installed as per California Building Code Section 907.2.11.2 outside of each separate sleeping area in the immediate vicinity of bedrooms and in each room used for sleeping purposes.
26. For new construction, an approved carbon monoxide alarm shall be installed in dwelling units and in sleeping units within which fuel-burning appliances are installed, and in dwelling units that have attached garages.
27. The address will need to be placed on the street side of the building, as required by the Fire Department.
28. Required vertical and horizontal occupancy separation must be met as per California Building Code Section 508.2.5.1.
29. As per California Fire Code Section 903.2.8, an automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area, as required by the Fire Department.
30. Exit hardware on new doors shall comply with California Fire Code Section 1008.1.9.3, as required by the Fire Department.
31. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Whitacre Residence including, but not limited to, Use Permit No. UP2010-021 and Modification Permit No. MD2010-027. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
32. This approval shall expire unless exercised within 24 months from the approval date, as specified in Section 20.93.050 (A) of the 1997 Zoning Code. Prior to the expiration date of this approval, an extension may be approved in accordance with Section 20.93.050 (B) of the 1997 Zoning Code. Requests for an extension must be in writing.

## **Attachment No. PC 2**

Draft Resolution - Reverse

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH REVERSING THE DECISION OF THE ZONING ADMINISTRATOR AND DENYING USE PERMIT NO. UP2010-021 AND MODIFICATION PERMIT NO. MD2010-027 FOR AN ADDITION AND ALTERATIONS TO A NONCONFORMING STRUCTURE THAT WILL ENCROACH INTO THE SIDE AND REAR SETBACKS LOCATED AT 101 15<sup>TH</sup> STREET (PA2010-105)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

**SECTION 1. STATEMENT OF FACTS.**

1. An application was filed by William Azzalino, with respect to property located at 101 15<sup>th</sup> Street, and legally described as Lots 1 and 2, Block 15, Section B, requesting approval of a use permit and modification permit.
2. The applicant proposes an addition to a nonconforming, mixed-use structure. The Use Permit would allow an addition of up to 75 percent of the existing square footage and up to 75 percent structural alterations to the existing structures. The Modification Permit would allow the proposed addition to encroach five (5) feet into the required five-foot side setback on the northerly side of the property and eight (8) feet into the required ten-foot rear alley setback.
3. The subject property is located within the Mixed-Use Cannery Village/15<sup>th</sup> St (MU-CV/15<sup>th</sup> St) Zoning District; however, the Retail and Service Commercial – Residential Overlay (RSC-R) District regulations from the 1997 Zoning Code apply to this project. The General Plan Land Use Element category is Mixed-Use Horizontal (MU-H4).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Horizontal (MU-H).
5. A public hearing was held on July 7, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place, and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

**SECTION 2. FINDINGS.**

The Planning Commission may approve a use permit and modification permit only after making each of the required findings set forth in Section 20.91.035, Section 20.62.040, and Section 20.93.030 of the 1997 Zoning Code. In this case, the Planning Commission was unable to make the required findings based upon the following:

1. Allowing an addition above the commercial structures and alterations of up to 75 percent of the existing structural elements prolongs the life of the nonconforming commercial structures. The nonconforming parking for the commercial uses is detrimental to the community and the life of the structures should not be extended to allow for an additional dwelling unit above.
2. The proposed structure should not be constructed within a setback area and the structure should be at least partially brought into conformance with the required setbacks.

**SECTION 3. DECISION.**

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby denies Use Permit No. UP2010-021 and Modification Permit No. MD2010-027 (PA2010-105), reversing the decision of the Zoning Administrator.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 7<sup>th</sup> DAY OF JULY, 2011.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_,  
Chairman

BY: \_\_\_\_\_,  
Secretary

# **Attachment No. PC 3**

Calculations of Structural Alterations



City of San Francisco  
Department of Planning and Economic Development  
101 Market Street, Suite 1000  
San Francisco, CA 94102

DATE

PROJECT NAME  
PROJECT ADDRESS

PROJECT

THIS REPORT WAS PREPARED BY THE CITY OF SAN FRANCISCO DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT. IT IS THE PROPERTY OF THE CITY OF SAN FRANCISCO AND IS LOANED TO YOU BY THE CITY OF SAN FRANCISCO. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE CITY OF SAN FRANCISCO. THE CITY OF SAN FRANCISCO DOES NOT WARRANT THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

DATE

PROJECT NAME  
PROJECT ADDRESS

PROJECT NAME  
PROJECT ADDRESS

09-10104

DATE

6-11-10

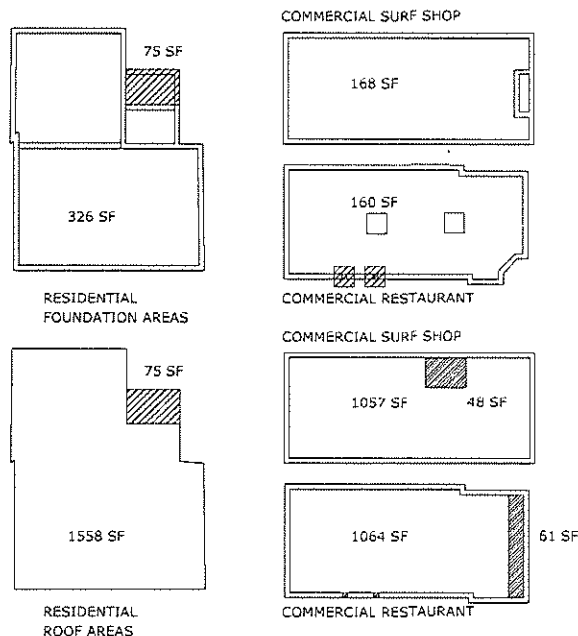
PROJECT

- △ 11-17 City Comments
- △ 12-20 City Comments
- △ 06-29 City Area Calc.
- △
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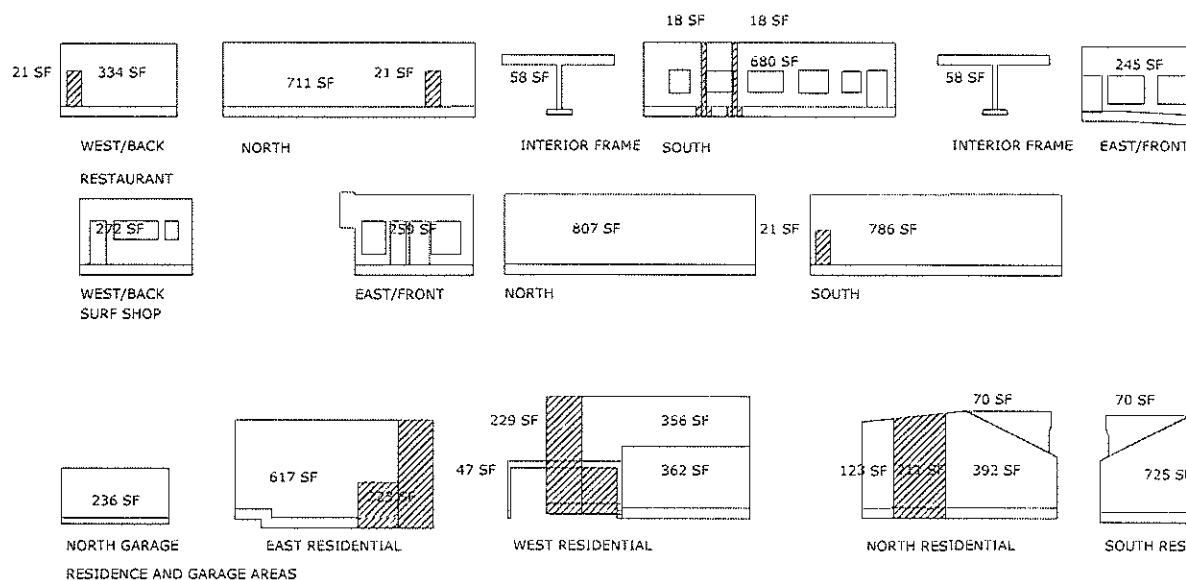
PROJECT

A-A1

DATE



AREA ANALYSIS CALCULATION			
AREA	TOTAL SF	MODIFIED SF	% MODIFIED
ROOFS	3833 SF	186 SF	4.9%
RESTAURANT WALLS AND FOUNDATIONS	2164 SF	78 SF	3.6%
SURF SHOP WALLS AND FOUNDATION	2145 SF	21 SF	1.0%
RESIDENCE WALLS AND FOUNDATION	3708 SF	663 SF	18.6%





## **Attachment No. PC 4**

Zoning Administrator Action Letter



## ZONING ADMINISTRATOR ACTION LETTER

PLANNING DIVISION  
3300 NEWPORT BOULEVARD  
NEWPORT BEACH, CA 92663  
(949) 644-3200 FAX (949) 644-3229

**Application No.** PA2010-105  
• Use Permit No. UP2010-021  
• Modification Permit No. MD2010-027

**Applicant** William Azzalino, AIA

**Site Address** 101 15th Street  
Whitacre Residence

**Legal Description** Lots 1 and 2, Block 15, Section B

On May 25, 2011, the Zoning Administrator approved the following: A use permit application for an addition of up to 75 percent of the existing gross floor area and alterations of up to 75 percent of the existing structural elements of a nonconforming structure. The applicant also requested a modification permit to allow the proposed addition to encroach into the required five-foot side setback on the northerly side of the property and the required ten-foot rear setback. The site is developed with two (2) commercial structures adjacent to 15<sup>th</sup> Street and a residential structure to the rear. The applicant proposes an addition to the existing residence and the addition of a new dwelling unit above the commercial structures. Four-car parking is proposed to satisfy the residential parking requirements.

Ordinance 2010-21, which adopted the current Zoning Code, provides that discretionary and ministerial applications deemed complete prior to the effective date of the ordinance may be processed under the previous Zoning Code, provided they are found consistent with the General Plan. The application was submitted and deemed complete prior to the adoption of the current Zoning Code. Therefore, this project is being reviewed subject to regulations of the previous Zoning Code (1997 Zoning Code). The property is located within the MU-CV/15<sup>th</sup> Street Zoning District, however, the RSC-R (Retail and Service Commercial – Residential Overlay) District regulations from the 1997 Zoning Code apply to this project.

The Zoning Administrator determined in this case that the proposed Use Permit and Modification Permit are consistent with the legislative intent of the 1997 Zoning Code and is approved based on the following findings per Section 20.91.035, Section 20.62.040, and Section 20.93.030 and subject to the following conditions:

## Findings

### *CEQA Compliance*

1. The project is exempt from environmental review pursuant to Section 15301 of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act. This exemption allows for the minor alteration of existing buildings and the addition of a new residential unit.

### *Use Permit*

2. Finding: The proposed location of the use is in accord with the objectives of the Zoning Code and the purposes of the district in which the site is located.

#### Facts in support of finding:

- The site is located in the RSC-R (Retail and Service Commercial – Residential Overlay) District of the 1997 Zoning Code. The intent of this district to provide areas which are predominantly retail in character but which allow some service office uses. The intent and purpose of the Residential Overlay district is to provide for the establishment of residential uses in commercial districts. The proposed mixed use project is a permitted use in this district. The existing eating and drinking establishment and retail surf shop meet the intent of the RSC district, and the existing and proposed residential units meet the intent of the R-Overlay District.
3. Finding: The proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.

#### Facts in support of finding:

- The existing commercial structures and residential units on site are consistent with the Mixed Use-Horizontal (MU-H4) land use designation of the General Plan, which applies to properties where it is the intent to establish the character of a distinct and cohesively developed district or neighborhood containing multi-family residential with clusters of mixed-use and/or commercial buildings. Mixed-use or commercial buildings are required on parcels at street intersections.

- The neighborhood is developed with commercial, residential, and mixed use properties. The subject property has been developed with mixed use for at least fifty years, and the addition of one (1) residential dwelling unit will not create any significant negative impacts.
  - The property abuts public rights-of-way of three sides; therefore, the addition is directly adjacent to only one (1) other property.
  - The proposed addition will provide the required parking for the residential units. The existing commercial structures are not being enlarged or intensified, so the parking demand is not being increased.
  - The proposed addition will conform to all other requirements of the 1997 Zoning Code, including height and square footage limitations.
4. Finding: The proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.

Facts in support of finding:

- The proposed mixed-use project is consistent with the legislative intent of Chapter 20.15 (Commercial Districts) and Chapter 20.52 (Residential (R) Overlay District) of the 1997 Zoning Code. The proposed project meets the development standards of the RSC-R district in regards to minimum site area per unit, height limit, and minimum lot area.
  - The existing structures are nonconforming due to encroachments into the 10-foot rear alley setback and 5-foot northerly side setback, and due to insufficient parking for the commercial uses. The proposed remodel of the existing residential unit and the addition of a unit are in conformance with the standards of Chapter 20.62 (Nonconforming Structures and Uses) of the 1997 Zoning Code. Section 20.62.040 (Nonconforming Structures) allows for structural alterations and additions of up to 75 percent with the approval of a use permit.
  - The existing residential unit conforms with the parking requirements of the R-Overlay District of two (2) parking spaces per unit. The proposed construction includes the addition of two (2) parking spaces for a total of four (4) parking spaces, meeting the residential parking requirements. No addition is proposed to the commercial structures.
5. Finding: The cost of improvements to be made is minor in comparison to the value of the existing nonconforming condition.

Facts in support of finding:

- The cost of the addition and alterations in comparison to the value of the existing nonconforming condition is minor because although the cost of the remodel as proposed may be high, the existing mixed-use structure could not be rebuilt if it were to be demolished. In order to bring the existing buildings into conformance with the required setbacks, the removal of a significant portion of the residential living area and the retail surf shop would be necessary.
  - Per the County Assessor's records, the total value of the property was assessed at \$1,508,322 for the 2010 calendar year.
6. Finding: The cost of correcting the nonconforming condition would exceed the cost of the other alterations proposed.

Facts in support of finding:

- Correcting the nonconforming setbacks would require the removal of existing floor area from the residential structure and retail surf shop. The proposed alterations within the setback areas are only a minor portion of the entire project; therefore, the cost of the overall project is greater than the cost of the alterations within the setback areas.
  - Demolition and replacement of the structures could not be accomplished without approval of a parking waiver.
  - The City has no plans on file for the original construction. Based on information from the County of Orange, the existing structures were built in the 1920s.
7. Finding: Retention of the nonconforming condition is necessary to maintain reasonable use of the structure.

Facts in support of finding:

- Retention of the nonconforming parking for the commercial structures is necessary because a mixed-use structure similar to the existing development could not be built under current development standards. The number of parking spaces required for the amount of commercial floor area allowed on this site is a minimum of ten (10) spaces based on a parking ratio of one (1) parking space for every 250 square feet of gross floor area. The minimum allowed floor area for a commercial structure on this mixed-use property is 1,250 square feet, which would require a minimum of five (5) parking spaces. This site does not provide adequate space for a code-compliant parking lot with 5-10 parking spaces, in addition to the required residential parking.

- Retention of the nonconforming rear setback encroachment maintains the existing livable space within the structure. Removing the encroachments would result in one (1) less bedroom and reduced living area in the living room and master bedroom.
8. Finding: The addition and alteration does not increase the structure's inconsistency with the regulations of the Zoning Code.

Facts in support of finding:

- The proposed project includes the addition of two (2) parking spaces, satisfying the requirements for residential parking. The commercial structures are not being enlarged or intensified.
- The proposed addition and alterations will meet all other development standards for the RSC-R District, with the exception of the Modification Permit requests.
- The proposed construction is contained generally within the footprint of the existing structure.

*Modification Permit*

9. Finding: The granting of the application is necessary due to the practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.

Facts in support of finding:

- The northerly side yard setback requirement of five (5) feet is due to the abutting property's Zoning designation of R-2 (Two-Unit Residential). The Zoning Code requires a side yard setback only because the abutting property is designated for residential use; however, the property to the north is developed with a mixed-use structure. This property is subject to abatement of the nonconforming mixed-use, but the property owner has applied for General Plan, Zoning Code, and Coastal Land Use Plan amendments to change the property to allow for mixed-use. If the amendment application is denied, then the property owner may request an extension on the abatement. Therefore, there is a possibility that the property will remain mixed-use for the foreseeable future.
- The additional dwelling unit is being proposed within the required setback in order for the wall to line up with the existing commercial structure on the first floor.

- The existing commercial structures and residential dwelling unit constitute a practical difficulty associated with the property as the only location available for the four-car parking is located within the side and rear yard setbacks.
10. Finding: The requested modification will be compatible with existing development in the neighborhood.

Facts in support of finding:

- The deviation from the Zoning Code requested through this application is compatible with the characteristics of the surrounding properties, many of which do not provide side yard or rear yard alley setbacks, either because of differing Zoning Code requirements or nonconforming encroachments.
  - Other properties on the block contain similar mixed-use projects with commercial structures on the first floor and residential uses above.
11. Finding: The granting of such an application will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and will not be detrimental to the general welfare or injurious to property or improvements in the neighborhood.

Facts in support of finding:

- The alley is approximately 25 feet wide and provides sufficient access for vehicles to park in the garages and carports. The 25-foot width is also adequate for circulation.
- The existing structures on site are built up to the northerly property line. The existing mixed-use structure to the north is also built on the property line, and this layout has not proven to be detrimental.
- The proposed encroachment into the alley setback is for the carports and a deck above. No new living area is proposed within the alley setback.

#### Conditions

1. The development shall be in substantial conformance with the approved plot plan, floor plans, and elevations, except as noted in the following conditions.
2. The guard rail for the deck adjacent to the alley shall be constructed with wrought iron, glass, or similar open or translucent material.
3. All signs shall conform to the provisions of Chapter 20.67 of the Municipal Code or any applicable comprehensive sign program that is in force for the subject property.

4. No temporary "sandwich" signs, balloons or similar temporary signs shall be permitted, either on-site or off-site, to advertise the proposed food establishment, unless specifically permitted in accordance with the Sign Ordinance of the Municipal Code. Temporary signs shall be prohibited in the public right-of-way, unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.
5. All trash shall be stored within the building or within public dumpsters provided for the convenience of businesses in the area, or otherwise screened from view of neighboring properties except when placed for pick-up by refuse collection agencies. The trash dumpsters shall have a top which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.
6. The applicant shall maintain the trash dumpsters or receptacles so as to control odors which may include the provision of fully self-contained dumpsters or may include periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Trash generated by the establishment shall be adequately contained in sealed plastic bags to control odors prior to placement in the trash dumpster.
7. Anything not specifically approved by this Use Permit and Modification Permit is prohibited and must be addressed in a separate and subsequent review.
8. This approval was based on the particulars of the individual case and does not, in and of itself or in combination with other approvals in the vicinity or Citywide, constitute a precedent for future approvals or decisions.
9. A building permit shall be obtained prior to commencement of the construction. The construction must meet all applicable Building Code requirements including parapets and guards and fire resistant construction, where required.
10. A copy of this approval letter shall be incorporated into the City and field sets of plans prior to issuance of the building permits.
11. Approval from the California Coastal Commission is required prior to issuance of a building permit.
12. Prior to issuance of building permits, the applicant shall provide a covenant for review and approval by the Office of the City Attorney as to form and content, that will address holding the site to no more than two (2) dwelling units. Once approved and properly executed, that document shall be forwarded to the City officials for recordation against the property with the County Recorder.
13. If any of the existing public improvements surrounding the site is damaged by private work, new concrete sidewalk, curb and gutter, street pavement, and other



public improvements will be required by the City at the time of private construction completion. Said determination and the extent of the repair work shall be made at the discretion of the Public Works inspector.

14. All work performed within the public right-of-way shall be reviewed and approved by the Public Works Department under an encroachment permit/agreement, if required.
15. Any nonstandard encroachment within the public right-of-way shall be removed, including any stairs or railings.
16. Each unit shall be served by separate water and sewer, and traffic grade lids shall be provided for each.
17. The applicant is responsible for all upgrades to the City's utilities as required to fulfill the project's demands, if applicable.
18. New and existing fire services shall be protected by a USC approved double check detector assembly and installed per STD-517-L, if required by the Fire Department.
19. New water services shall be installed per STD-502-L or STD-503-L, depending on the size.
20. New and existing commercial water meter(s) shall be protected by a USC approved reduced pressure backflow assembly and installed per STD-520-L-A.
21. New and existing sewer laterals shall have a cleanout installed per STD-406-L.
22. The project will need to meet fire flow requirements with the addition to the building. The City and field sets of plans shall show all existing and proposed fire hydrants located within 300 feet of the project.
23. Smoke alarms will be required in the R occupancies and shall be installed as per California Building Code Section 907.2.11.2 outside of each separate sleeping area in the immediate vicinity of bedrooms and in each room used for sleeping purposes.
24. For new construction, an approved carbon monoxide alarm shall be installed in dwelling units and in sleeping units within which fuel-burning appliances are installed, and in dwelling units that have attached garages.
25. The address will need to be placed on the street side of the building, as required by the Fire Department.

26. Required vertical and horizontal occupancy separation must be met as per California Building Code Section 508.2.5.1.
27. As per California Fire Code Section 903.2.8, an automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area, as required by the Fire Department.
28. Exit hardware on new doors shall comply with California Fire Code Section 1008.1.9.3, as required by the Fire Department.
29. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Whitacre Residence including, but not limited to, Use Permit No. UP2010-021 and Modification Permit No. MD2010-027. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
30. This approval shall expire unless exercised within 24 months from the approval date, as specified in Section 20.93.050 (A) of the 1997 Zoning Code. Prior to the expiration date of this approval, an extension may be approved in accordance with Section 20.93.050 (B) of the 1997 Zoning Code. Requests for an extension must be in writing.

#### **APPEAL PERIOD**

The applicant or any interested party may appeal the decision of the Planning Director, Zoning Administrator and department staff to the Planning Commission by a written request to the Planning Director within 14 days of the action date. A \$4,333.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the Planning Department at 949-644-3200.

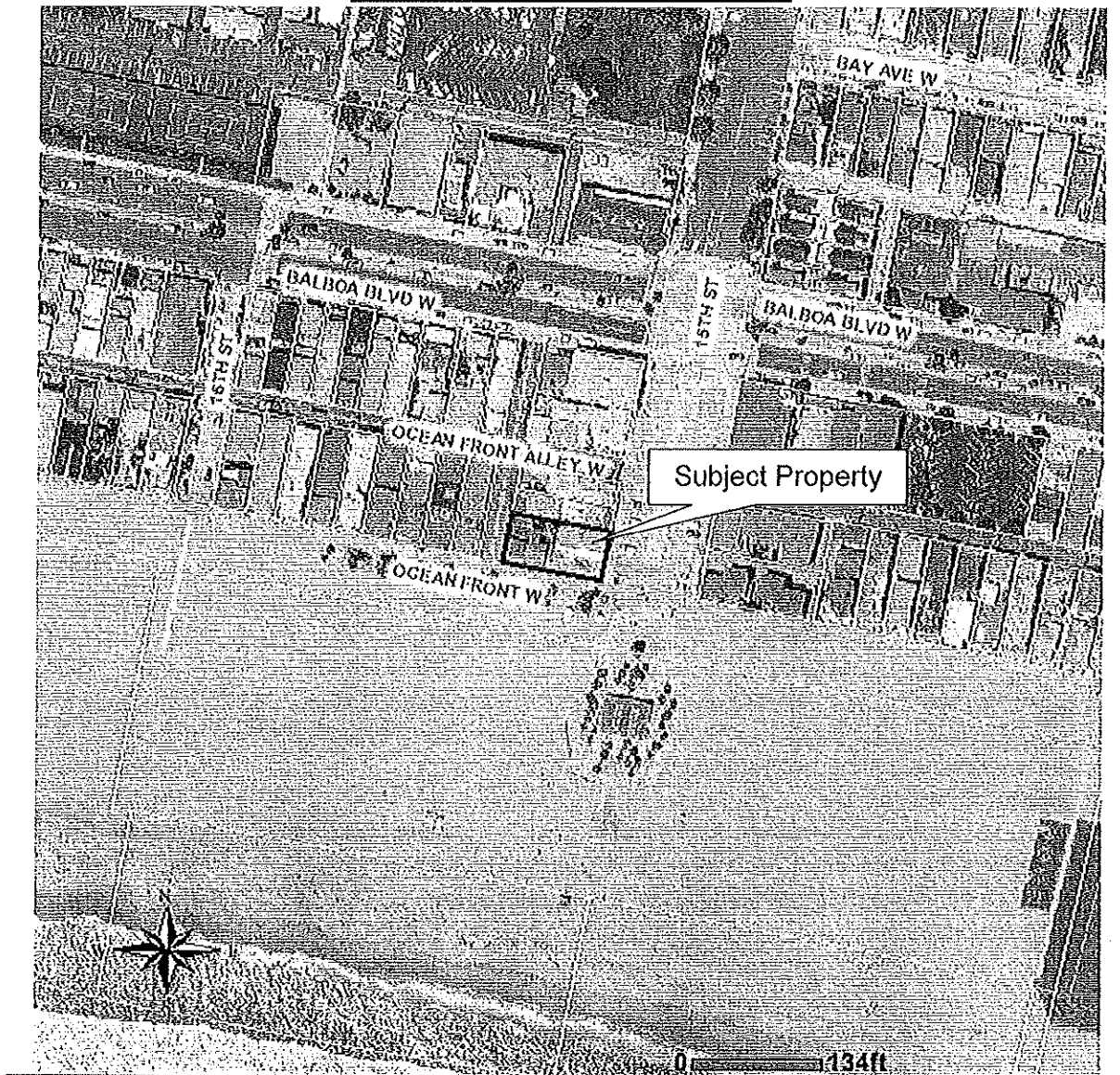
By: 

Patrick Alford, Zoning Administrator

PA/fn

Attachments: Vicinity Map  
Project Plans

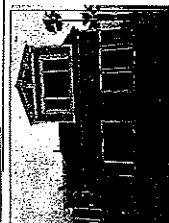
## VICINITY MAP



Use Permit No. UP2010-021  
Modification Permit No. MD2011-027  
PA2010-105

**101 15th Street**







WILLIAM AZZALINO ARCHITECT  
ARCHITECTS / INTERIORS  
1000 15th Street, Suite 100  
San Francisco, CA 94103-1000  
Phone: 415.774.1111  
Fax: 415.774.1112

WITH VETERANS RESIDENCE  
101 - 1015th Street, Suite 100  
San Francisco, CA 94103-1000  
Phone: 415.774.1111  
Fax: 415.774.1112

THE DRAWINGS AND SPECIFICATIONS  
ARE PROPERTY OF WILLIAM AZZALINO  
ARCHITECTS AND SHALL NOT BE USED  
ON ANY OTHER PROJECT WITHOUT  
THE WRITTEN PERMISSION OF  
WILLIAM AZZALINO ARCHITECTS.  
ANY REUSE OR MODIFICATION  
WITHOUT WRITTEN PERMISSION  
IS PROHIBITED. THE USER  
AGREES TO HOLD WILLIAM AZZALINO  
ARCHITECTS HARMLESS FROM  
ANY AND ALL CLAIMS, DAMAGES,  
LOSSES AND EXPENSES, INCLUDING  
ATTORNEY'S FEES, ARISING OUT OF  
OR RESULTING FROM THE USE OF  
THESE DRAWINGS AND SPECIFICATIONS.

GROUND FLOOR PLAN

PROJECT NUMBER

01-10104

DATE

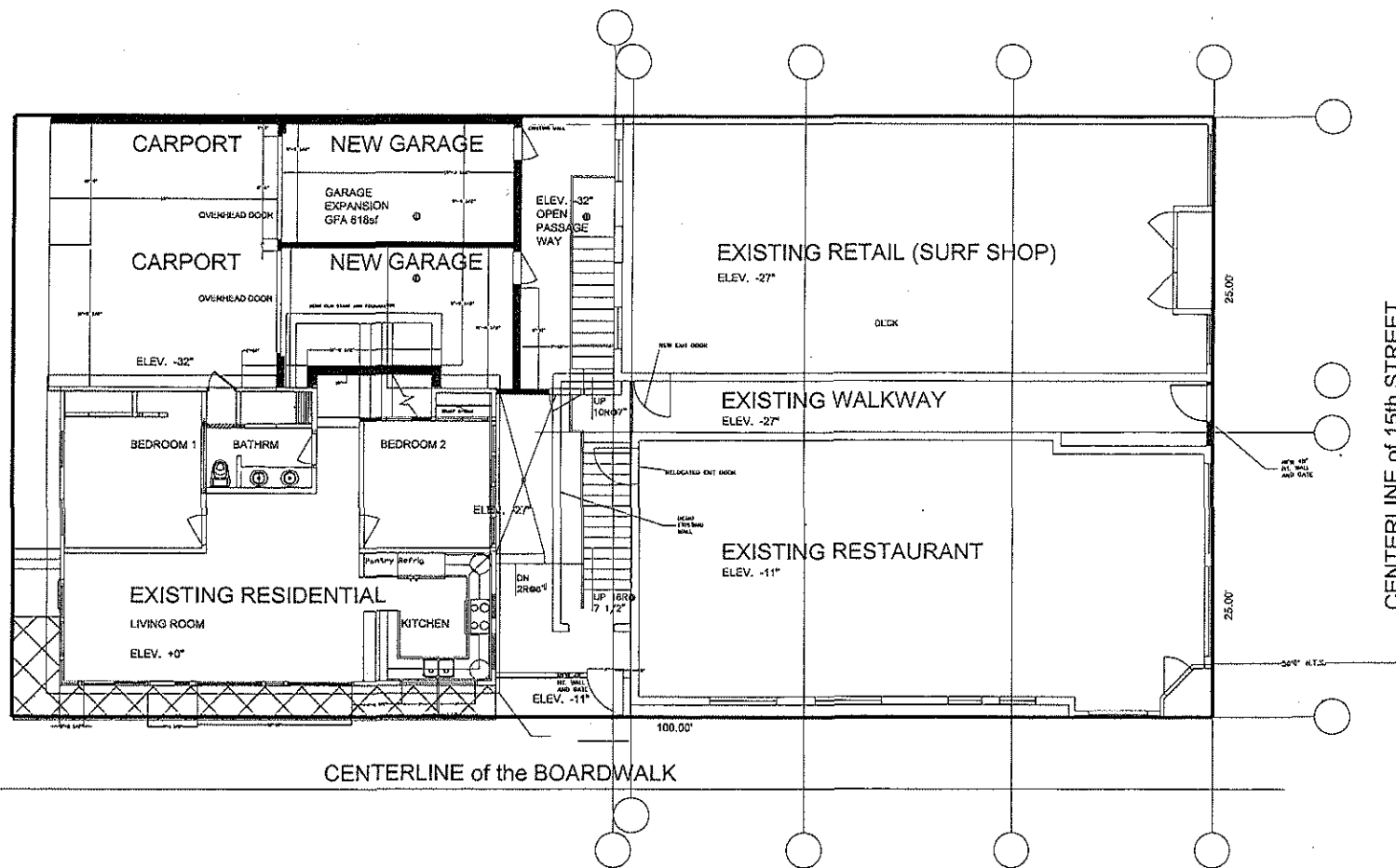
01-20-10

SCALE

INCHES

- △ 11-18 City Comments
- △ 12-29 City Comments
- △ 01-26/11 City Comments Rm
- △ 02-25/11 City Comments Rm
- △
- △
- △

PROJECT NUMBER  
**A-1**  
SHEET NUMBER



GROUND FLOOR PLAN  
SCALE 1/4" = 1'-0"

- LEGEND
- PROPERTY LINE
  - EXISTING WALL
  - NEW WALL

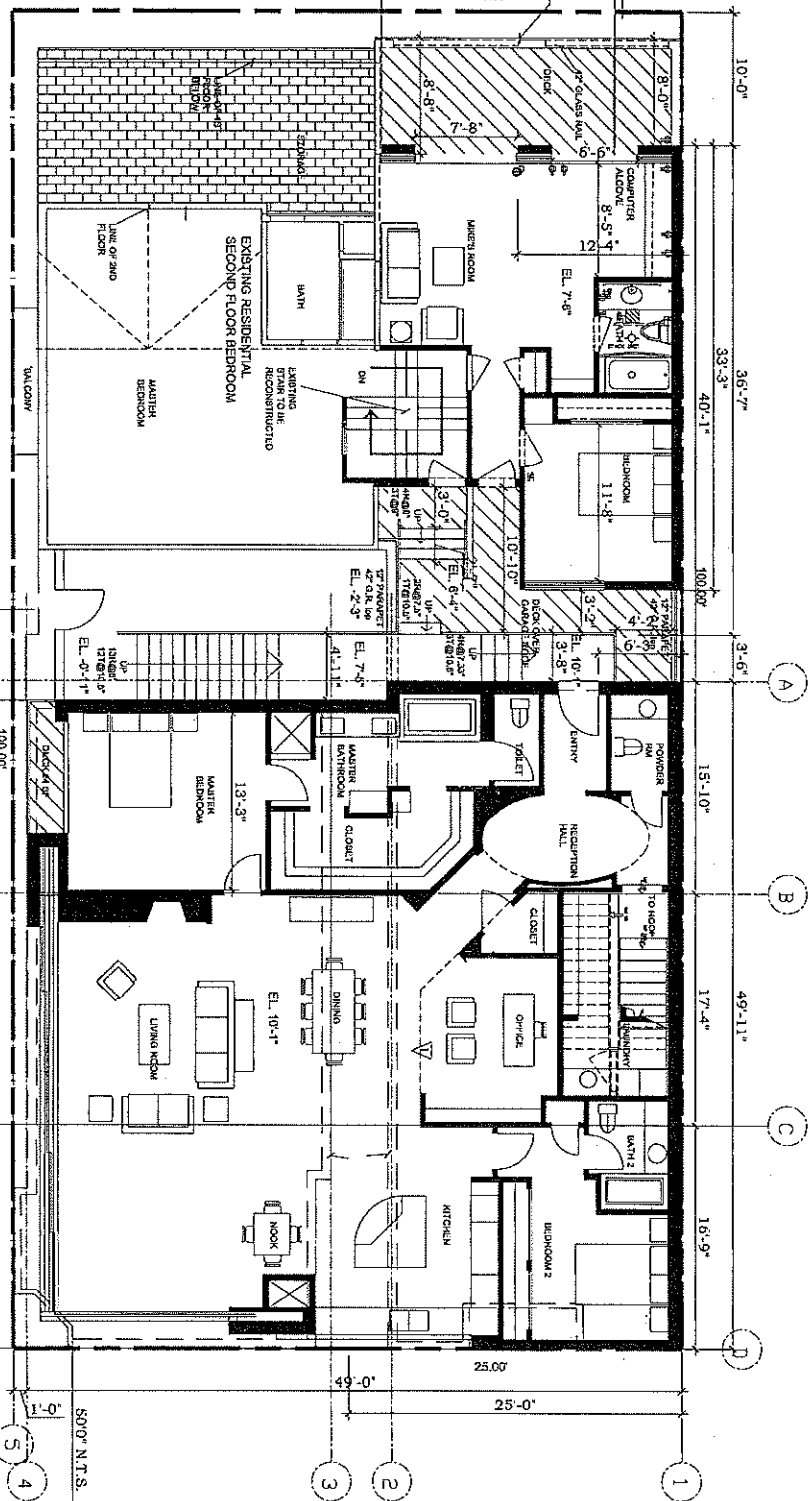
# SECOND FLOOR PLAN

SCALE 1/8" = 1'-0"

CENTERLINE of the BOARDWALK

CENTERLINE of ALLEY

CENTERLINE of 15th STREET



- LEGEND**
- PROPERTY LINE
  - EXISTING WALL
  - NEW WALL

**A-2**



**NOTES:**

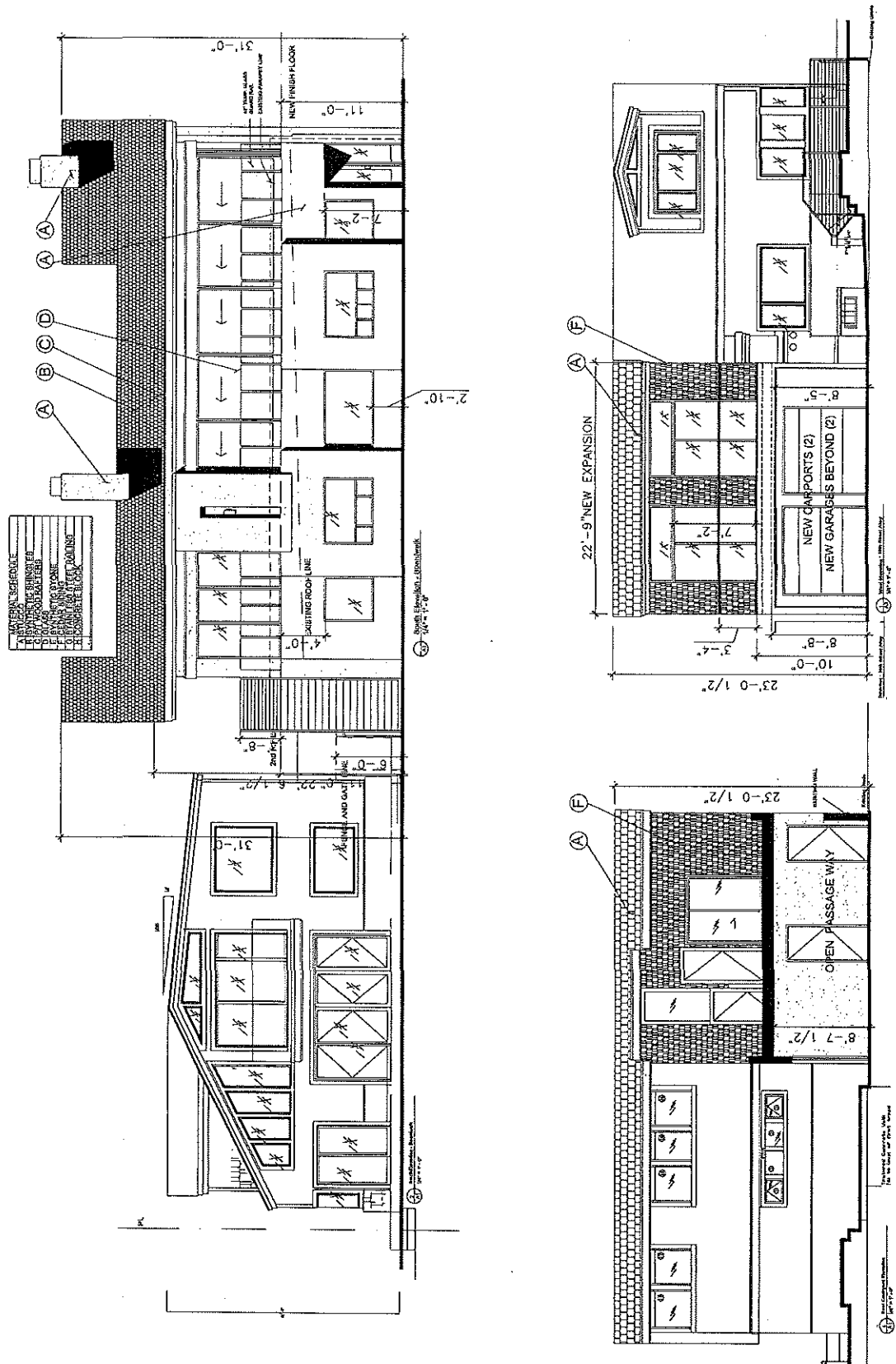
1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ORDINANCES OF THE CITY OF SAN FRANCISCO.
2. THE ARCHITECT HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE EXISTING CONDITIONS OF THE PROJECT AND HAS FOUND THEM TO BE AS SHOWN ON THE DRAWINGS.
3. THE ARCHITECT HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE EXISTING CONDITIONS OF THE PROJECT AND HAS FOUND THEM TO BE AS SHOWN ON THE DRAWINGS.
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**REVISIONS:**

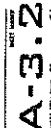
NO.	DATE	DESCRIPTION
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2	10-15-10	ISSUED FOR PERMIT

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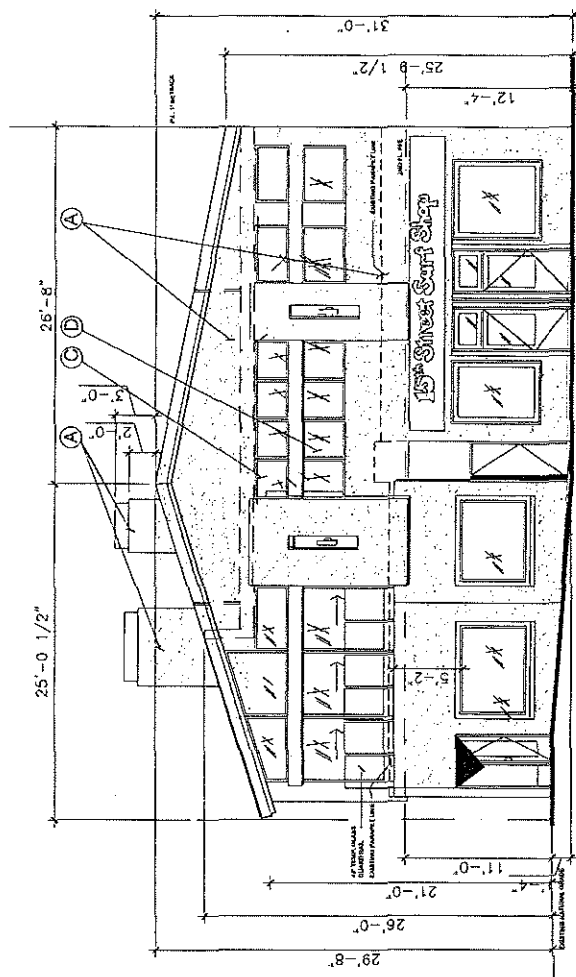
PROJECT NAME: SECOND FLOOR PLAN  
 PROJECT ADDRESS: 1234 15th Street, San Francisco, CA 94103  
 PROJECT OWNER: Mr. John Doe  
 PROJECT ARCHITECT: Mr. Jane Smith, AIA  
 PROJECT ENGINEER: Mr. Bob Johnson, P.E.

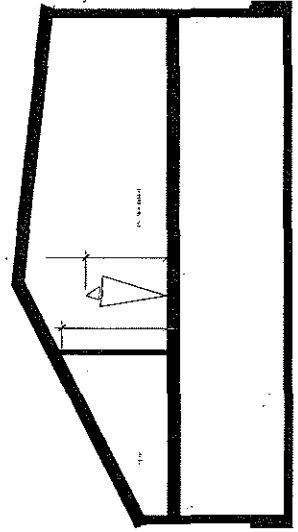
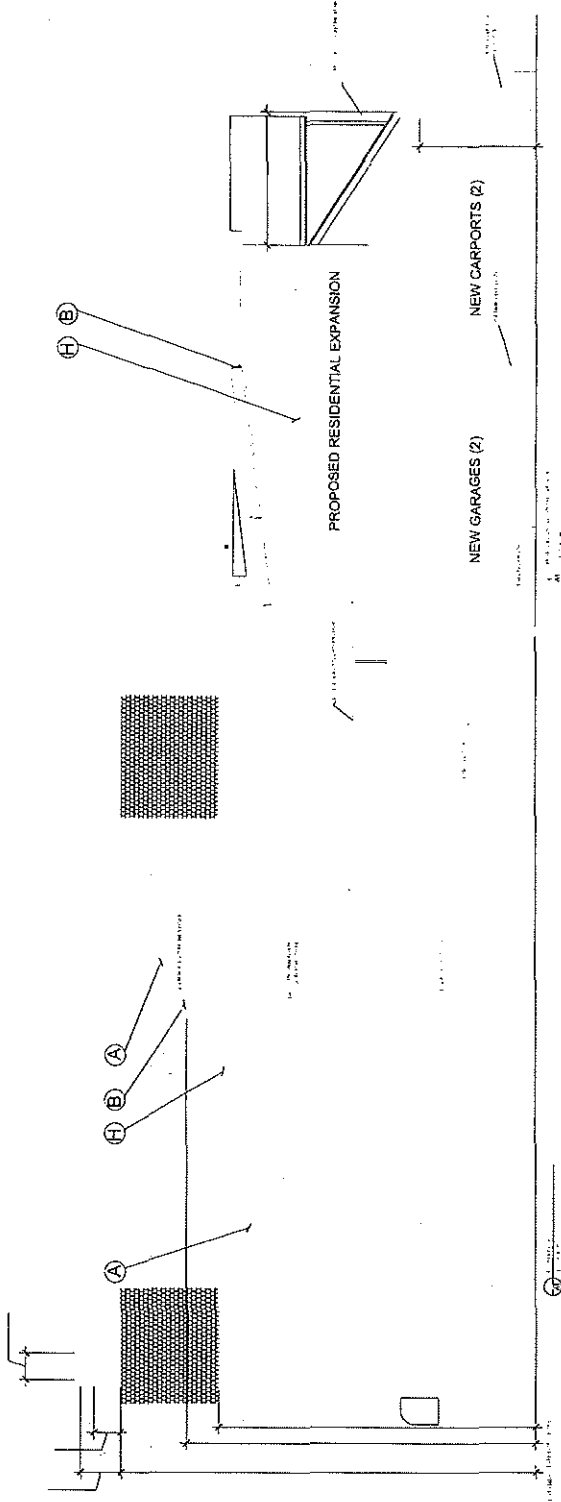
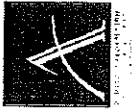






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A-3.3

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# **Attachment No. PC 5**

Correspondence

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**To:** FILE  
**Subject:** MAY 25, 2011 ZONING ADMINISTRATOR HEARING

**PA2010-105 for UP2010-021, MD2010-027**  
**PA2010-174 for LM2010-007**

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**From:** Edward Healy [<mailto:ehealy5@sbcglobal.net>]  
**Sent:** Tuesday, May 24, 2011 1:49 PM  
**To:** Nueno, Fern  
**Cc:** Ed Healy  
**Subject:** Stuff Surfer & Surf Shop Project 15th Street

Fern, my name is Ed Healy, owner of 2 lots on 15 Street (111 and 113 Fifteenth)...  
I can not make the Planning Meeting on this project, but you like to voice a few concerns based on my understanding of the project. Any new project on this property, should have to include moving the trash "dumpster" in the street in front of the Stuff Surfer (not a good look to our street)... also parking and structural design to build "on top of those old building" are questions the city will be all over, I assume.  
Ed Healy  
cell phone number 949 274 6452  
home line 949 548 4122

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To: FILE  
Subject: MAY 25, 2011 ZONING ADMINISTRATOR HEARING

PA2010-105 for UP2010-021, MD2010-027  
PA2010-174 for LM2010-007

-----Original Message-----

From: Grace Dove [<mailto:doveperch@sbcglobal.net>]  
Sent: Tuesday, May 24, 2011 1:32 PM  
To: Nueno, Fern  
Cc: [mhenn527@hotmail.com](mailto:mhenn527@hotmail.com)  
Subject: 101 15th Street: Zoning Administrator Hearing 5/25/11

The Whitacre/Angelo residence is scheduled for consideration of discretionary actions by the Zoning Administrator on the Agenda of 5/25/11, Item 4. My comment is as follows:

This is a mixed use property. While the actions requested focus on the residential portion of the property's use, consideration also should be given to the trash disposal of the commercial uses. Currently there is a commercial dumpster placed on the public street (15th Street) in front of 101 15th Street adjacent to the beach boardwalk. Commercial trash pickup is required inasmuch as the City does not pick up commercial trash, only residential trash. This dumpster should be accommodated on the property of the applicant, not on a public street in full view of recreational visitors and local residents. I recommend that the plans for this property accommodate commercial trash pickup from the alley behind 101 15th Street.

Thank you for the opportunity to comment.

Grace Dove  
117 15th Street  
Newport Beach

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To: FILE  
Subject: MAY 25, 2011 ZONING ADMINISTRATOR HEARING

**PA2010-105 for UP2010-021, MD2010-027**  
**PA2010-174 for LM2010-007**

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**From:** Ria Van Ornum [<mailto:riatwohawks@comcast.net>]  
**Sent:** Monday, May 23, 2011 1:45 PM  
**To:** Nueno, Fern  
**Subject:** Public Hearing 5/25 re: 101 15th street: project file PA2010-105 and PA2010-174

Dear Madam/ Sirs:

I am in receipt of your Notice of Public Hearing ( May 25) with regard to Project File nos: PA2010-105 & PA2010-174: the Whitacre/ Angelo residence and adjacent commercial businesses.

As I cannot attend the hearing I would like to submit the following points of concern for the record:

1. It appears Mr Angelo is seeking to build a large unit over the "Stuft Surfer restaurant and Surf Shop on 15th street....and an adjacent unit to the existing house on the Ocean Front property- the resulting project being 3 residential units and 2 commercial businesses with parking for four cars. That is an awful lot of building on two small lots !... and not enough parking!
2. The last remodel of 1504 Ocean Front ( done by Mr Angelo) took **five years** to complete! The entire neighborhood had to live through a massive construction mess with all the "stops" and "starts". It became a safety issue for both pedestrians and residents in the area.
3. Additionally it should be noted that the two existing small businesses that will bear the "weight" of this development- the Stuft Surfer and most especially the 15th Street Surf Shop are part of Newport local history. The Surf Shop contains local Surf memorabilia going back to the 30's . Were a project of this size to be built, no doubt these two iconic shops would be demolished to satisfy construction requirements. What a loss!

As a former resident and existing owner of 107 15th Street ( single residence) I am disheartened when I think of the possibility of over development in the "Village".

Please enter my comments into the record for this hearing.

I sincerely hope the city will be thoughtful and deliberate in its evaluation of this issue.

Sincerely

Ria Van Ornum- owner 107 15th Street  
Newport Beach, CA 92663

[riatwohawks@comcast.net](mailto:riatwohawks@comcast.net)

# **Attachment No. PC 6**

Appeal Letter



LAW OFFICES OF ROBERT C. HAWKINS

June 8, 2011

Via Facsimile Only

Kimberly Brandt, Community Development Director  
James Campbell, Acting Planning Director  
Planning Department  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, California 92663

Re: Appeal of the Zoning Administrator's Grant of Use Permit No. UP2010-021 and Modification Permit No. MD2010-027 (PA2010-105) for 101 15th Street also known as the Whitacre Residence

Greetings:

Pursuant to the current Zoning Code and the old 1997 Zoning Code, I appeal and/or call for review of the captioned action on the following basis and grounds:

First, the Use Permit is inconsistent with other Use Permits in the vicinity. Second, the Planning Director failed to make a finding that the captioned use and structure is non-conforming as required by Section 20.62.040 A of the 1997 Zoning Code. (Unless noted, all references herein are to the 1997 Zoning Code.)

Third, the Planning Director failed to make the appropriate health, safety and welfare findings as required by the Code and erroneously concluded that the captioned structure and use was not injurious to the health, safety and welfare of the community and its residents. However, the Use Permit acts to waive crucial parking in an area which has a severe parking shortage.

Fourth, the Planning Director failed to make the correct findings under Section 20.62 F. For instance, Section 20.62.040 F (1) requires that the review authority including the Planning Director make a finding that "[t]he cost of the improvements to be made is minor in comparison to the value of the existing nonconforming condition." However, the Planning Director admits that the cost of the improvements "may be high" but fails to provide any documentation regarding such costs. Moreover, the Planning Director failed to consider alternative improvements which would eliminate or diminish the nonconforming condition.

Fifth, Section 20.62.040 F(2) requires that the review authority including the Planning Director make a finding that "[t]he cost of correcting the nonconforming condition would exceed the cost of

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110 Newport Center Drive, Suite 200  
Newport Beach, California 92660  
(949) 650-5550  
Fax: (949) 650-1181

Kimberly Brandt, Community Development Director  
James Campbell, Acting Planning Director

- 2 -

June 3, 2011

the other alterations proposed." However, as indicated above, the Planning Director provided no specific basis for this finding. Further, the Planning Director erroneously found that demolition of the structure would then necessitate a parking waiver, when the Use Permit in essence grants a parking waiver.

Sixth, the subject property has a newer residential structure and aging commercial structures. By allowing demolition of seventy-five (75%) percent of the entire structure, the Use Permit could authorize the retention of the newer residential structure and **the complete demolition of the commercial structure.** The Use Permit would not require that the entirely new commercial structure provide parking on site. In essence, it allows for a parking waiver for the new commercial space. At the very least, the Use Permit should be conditioned to prohibit the complete demolition of the commercial structure.

Finally, the Use Permit requires application of the 1997 Zoning Code. This Code is not generally available to the public or decision makers. This absence makes it difficult to evaluate such applications which require consideration of the 1997 Zoning Code. As long as the City processes such applications, it should place the 1997 Zoning Code on the City's website. Also, the Use Permit is captioned "Whitacre Residence." However, as indicated above, the concern is the non-conforming commercial structures; calling it a "residence" is at best misleading.

Given that the hearing will be de novo, I reserve the right to supplement additional reasons which may arise during this appeal process or in review of public records in connection with this matter.

Thank you for your assistance in this matter. Of course, notwithstanding this appeal, thank you for the fine and difficult work that you and your department have done and continue to do. I look forward to learning the date and time of the hearing on this appeal. Should you have any questions, please do not hesitate to contact me.

Sincerely,

LEWIS OFFICES OF ROBERT C. HAWKINS



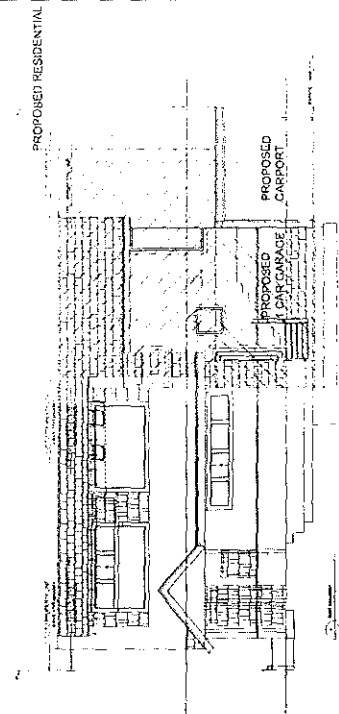
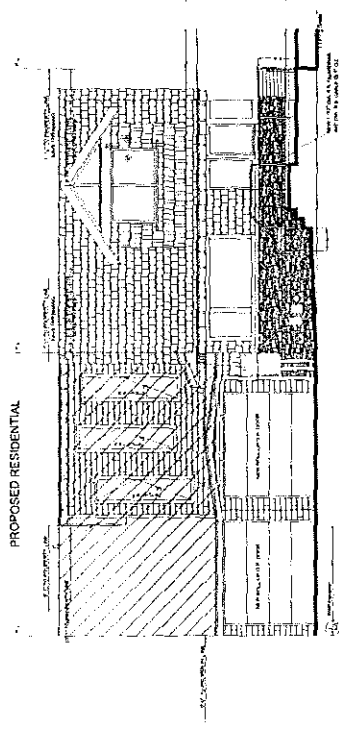
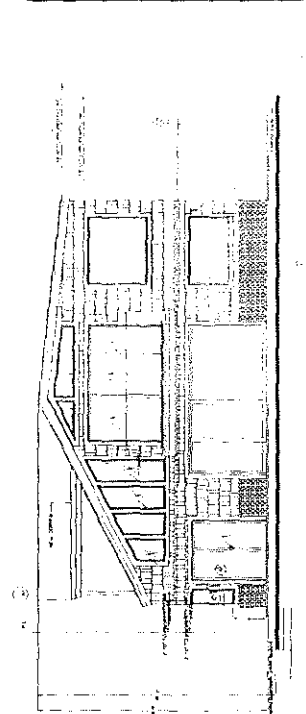
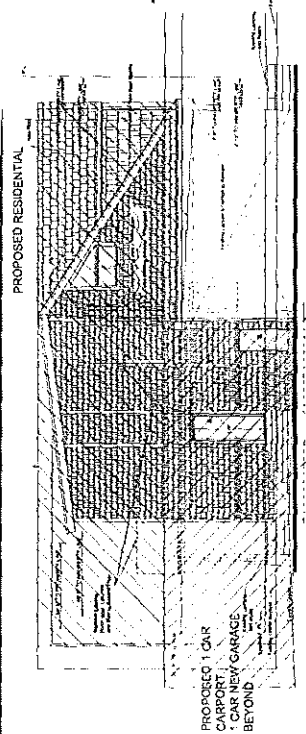
By: Robert C. Hawkins

RCH/kw

cc: Leilani Brown, City Clerk (Via Facsimile Only)

# **Attachment No. PC 7**

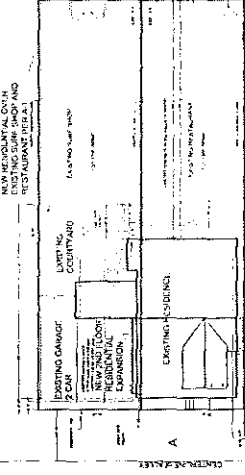
Project Plans



EXISTING EXTERIOR ELEVATIONS/PROPOSED EXPANSION AREAS

SCALE 1/8"=1'-0"

Existing Elevation	Proposed Expansion	Existing Zone	Proposed Zone
1. 1st Floor (Left)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
2. 1st Floor (Right)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
3. 2nd Floor (Left)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
4. 2nd Floor (Right)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
5. 3rd Floor (Left)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
6. 3rd Floor (Right)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
7. 4th Floor (Left)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
8. 4th Floor (Right)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
9. 5th Floor (Left)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
10. 5th Floor (Right)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
11. 6th Floor (Left)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
12. 6th Floor (Right)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
13. 7th Floor (Left)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
14. 7th Floor (Right)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
15. 8th Floor (Left)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
16. 8th Floor (Right)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
17. 9th Floor (Left)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
18. 9th Floor (Right)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
19. 10th Floor (Left)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial
20. 10th Floor (Right)	2,000 sq. ft. commercial	2,000 sq. ft. commercial	2,000 sq. ft. commercial



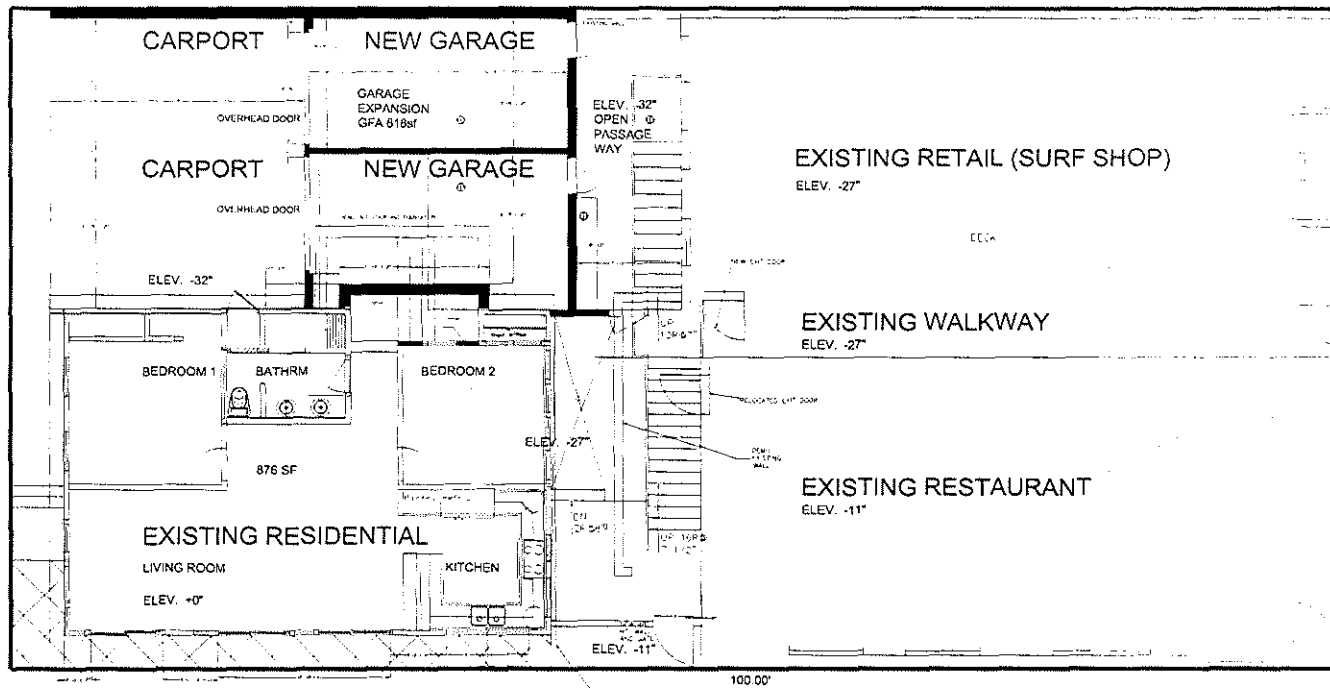
SITE PLAN SHOWING EXPANSION

PROPOSED RESIDENTIAL  
RESIDENTIAL  
2 STORY  
EXISTING RESIDENTIAL

PA2010-105 for UP2010-021 MD2010-027  
101 15th Street  
William Azzalino, AIA

A-D





CENTERLINE of the BOARDWALK

CENTERLINE of 15th STREET

GROUND FLOOR PLAN  
SCALE 1/4" = 1'-0"

LEGEND

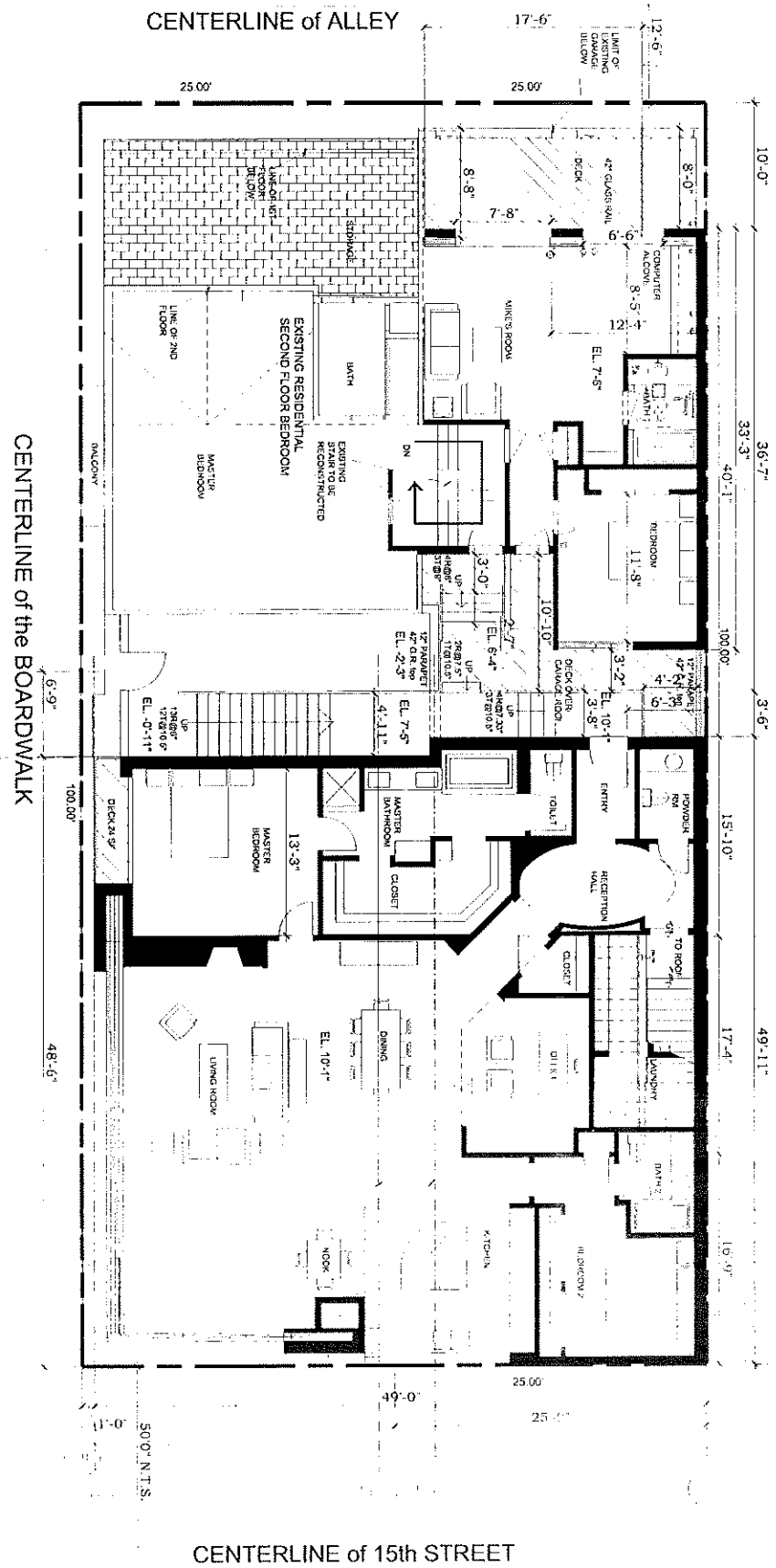
- PROPERTY LINE
- - - EXISTING WALL
- NEW WALL

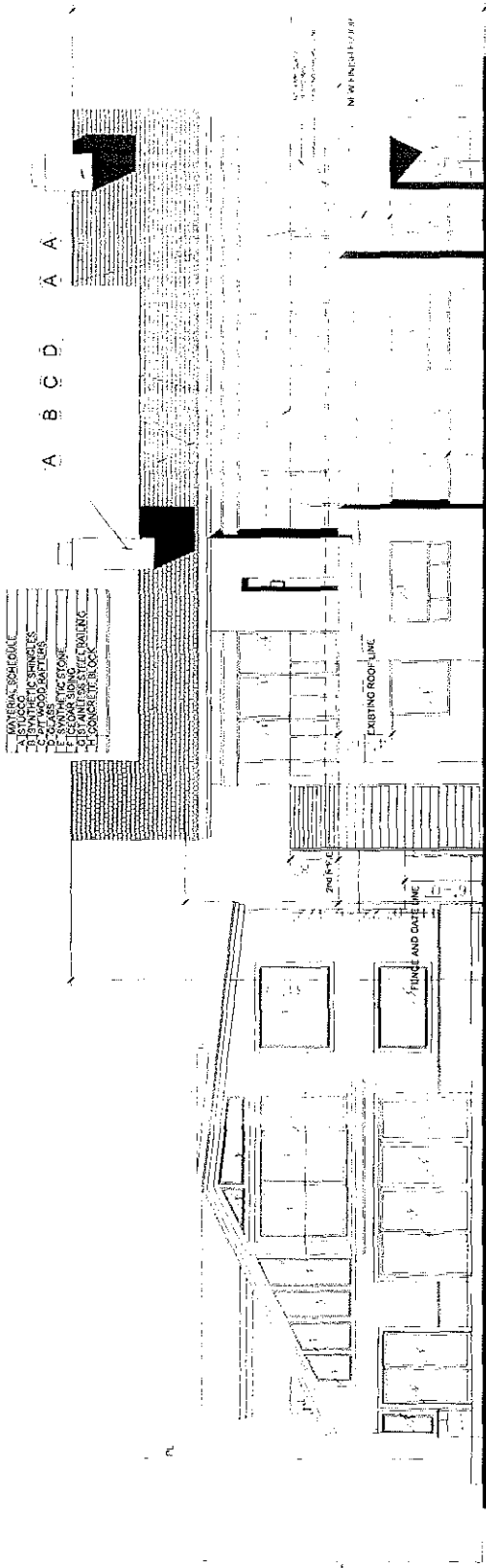
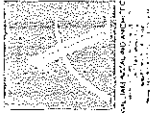
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LEGEND

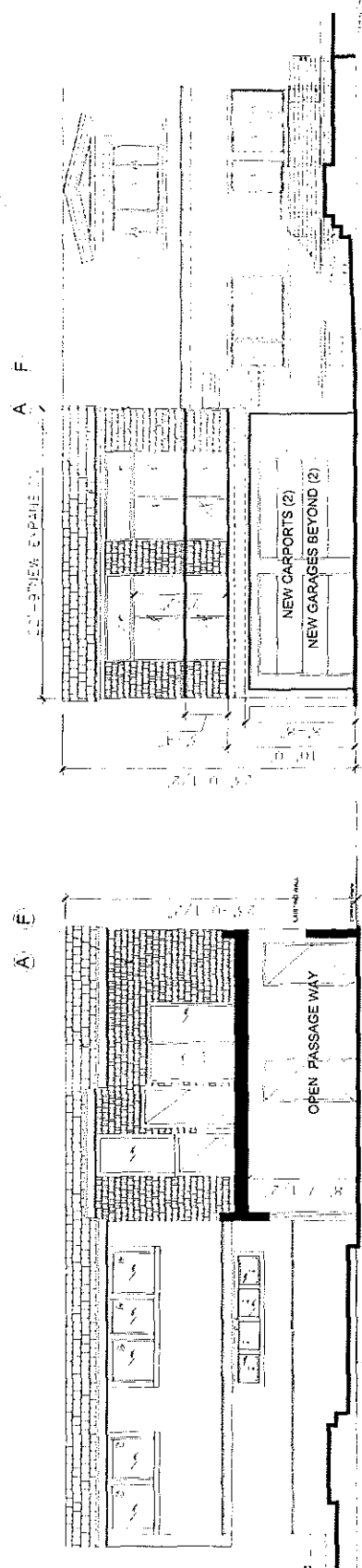
PROPERTY LINE
EXISTING WALL
NEW WALL

A-2

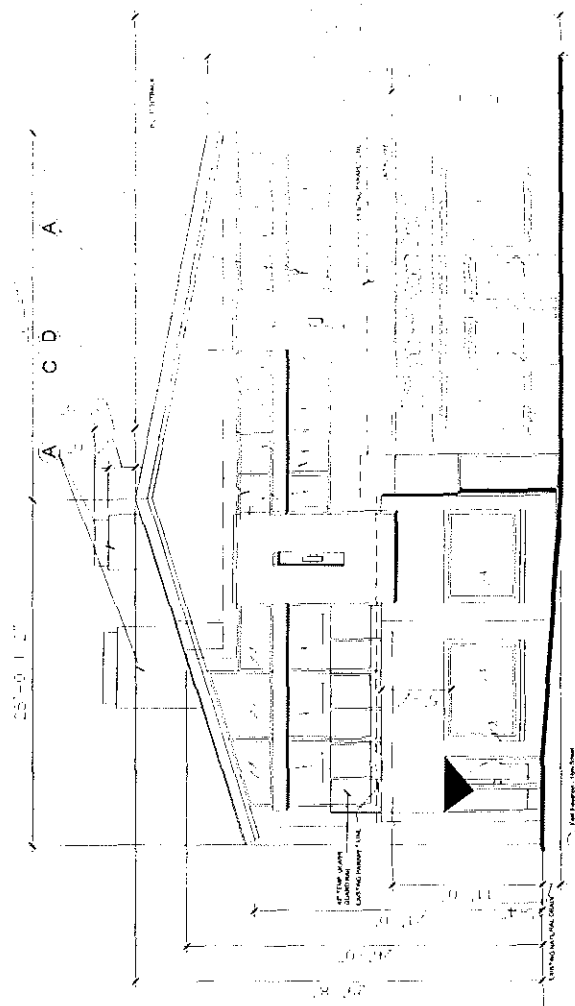
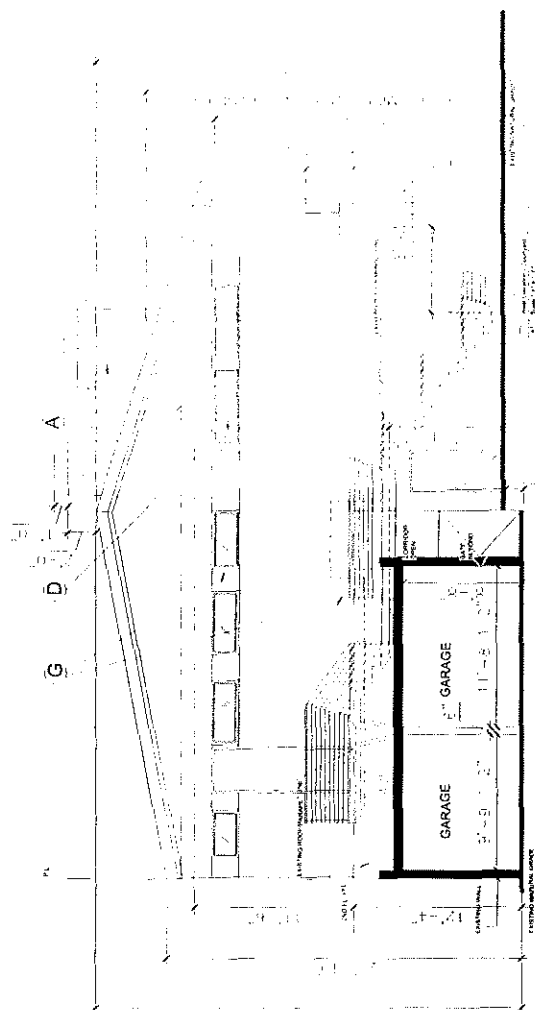




South Elevation - Front View  
1/4\"/>











A-A

FROM A.A.

TO CONN. L. CO.  
OWN. COMM. B.C.

RECEIVED  
JUL 10 1900

W. H. CO.

W. H. CO.

TO CONN. L. CO.  
OWN. COMM. B.C.



COMMERCIAL SURF SHOP

75 SF

168 SF

180 SF

RESIDENTIAL  
FOUNDATION AREAS

COMMERCIAL RESIDENT

COMMERCIAL SURF

180 SF

48 SF

1558 SF

1064 SF

61 SF

RESIDENTIAL  
ROOF AREAS

COMMERCIAL RESIDENT

18 SF

18 SF

680 SF

21 SF

334 SF

711 SF

21 SF

58 SF

WEST/BACK  
RESTAURANT

272 SF

807 SF

21 SF

786 SF

WEST/BACK  
SURF SHOP

223 SF

362 SF

362 SF

70 SF

NORTH GARAGE  
RESIDENCE AND GARAGE AREAS

EAST RESIDENTIAL

WEST RESIDENTIAL

NORTH RESIDENTIAL

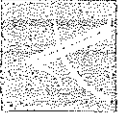
SOUTH RESIDENTIAL

EAST RESIDENTIAL

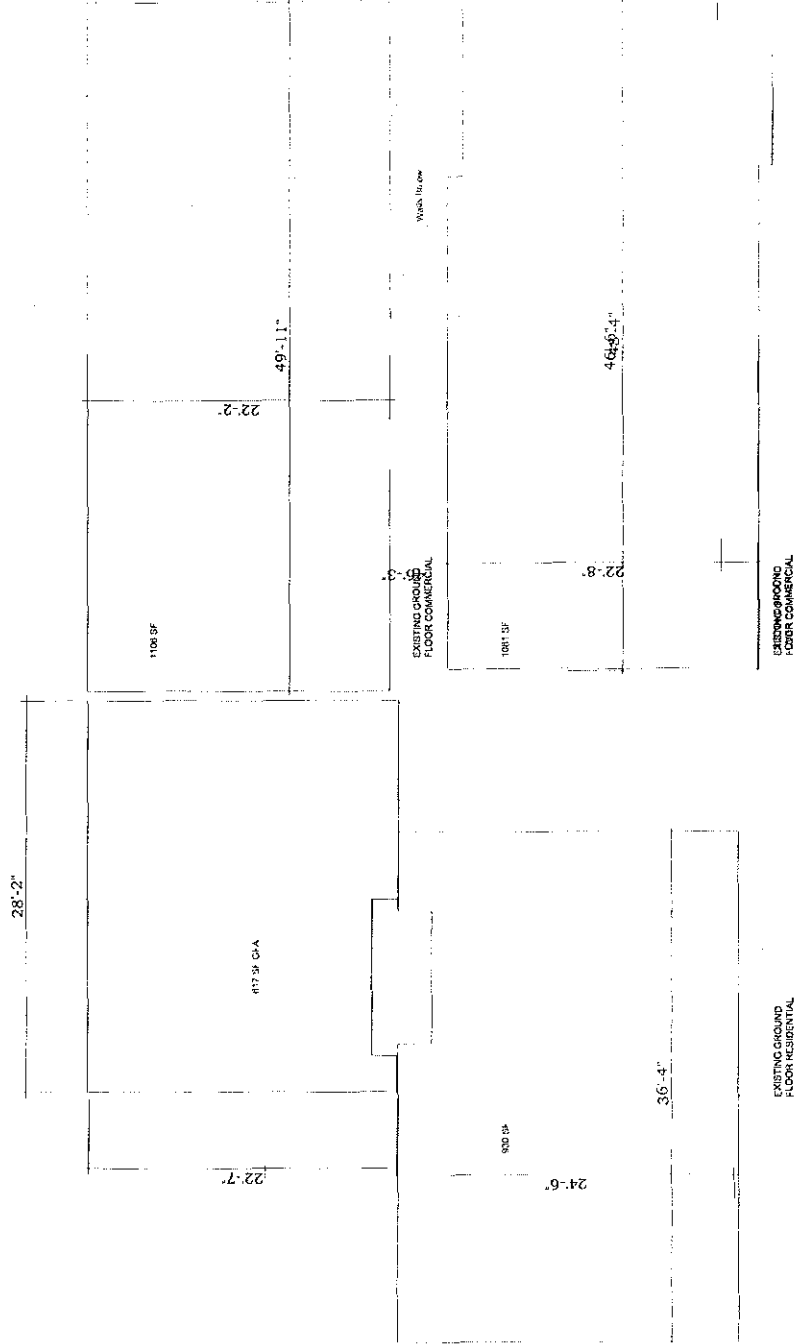
AREA ANALYSIS CALCULATION

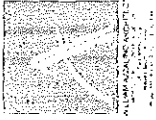
AREA	TOTAL SF
ROOFS	3832 SF
RESTAURANT WALLS AND FOUNDATIONS	2164 SF
SURF SHOP WALLS AND FOUNDATIONS	2145 SF
RESIDENCE WALLS AND FOUNDATIONS	3708 SF

A-A1



A-A2





C-V-V

